ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1876.

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INDEX

TO THE

ABSTRACT OF PROCEEDINGS

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VOL. XV.

A.

Page.

ACT No. XVIII OF 1854. See *Indian Railways.*
" " I OF 1859. " *Merchant Seamen.*
" " VIII OF 1860. " *Indian Telegraphs.*
" " XVI OF 1861. " *Stage Carriage Act Amendment.*
" " VI OF 1863. " *Sea Customs.*
" " XX OF 1865. " *Revenue Agents.*
" " VIII OF 1871. " *Registration.*
" " XXVI OF 1871. " *Land Improvement.*
" " XXVII OF 1871. " *Criminal Tribes Act Extension.*
" " X OF 1872. " *Presidency Police Magistrates.*

ADJOURNMENT. See *Council of the Governor General.*

AMENDMENT adopted 82
moved 186
negatived 351
withdrawn 82, 188

AMENDMENT OF LAWS. See *Bombay Municipal Debentures, Burma Forest, Criminal Tribes Act Extension, General Forest, Indian Railways, Indian Telegraphs, Land Improvement, Merchant Seamen, Opium, Registration Act Amendment, Revenue Agents, Specific Relief, Stage Carriages, Treasure-trove.*

APPEALS. See *Civil Appeals.*

ARBUTHNOT, HON'BLE SIR A. J.,
Civil Procedure Bill 273
Madras Harbour Dues Bill 221
Merchant Seamen's Bill 169
Opium Bill 329
Reformatory Schools Bill 44, 49, 53, 59, 61

ARBUTHNOT, HON'BLE SIR A. J., appointed to Select Committee ... 79, 192, 215, 227, 371

Page.

B.

BALRÁMPUR. See *Dig-Bijay Singh.*
BANKS. See *Presidency Banks.*
BAYLEY, HON'BLE SIR E. C.,
Civil Procedure Bill 276
Criminal Tribes Act Extension Bill 44, 69
Indian Museum Bill 61, 76, 84, 96, 133, 352, 373, 375
Merchant Seamen's Bill 169
Registration Act Amendment Bill 184, 188
Stage Carriages Act Amendment Bill 160, 190, 191, 280, 290
Treasure-trove Bill 191, 193, 312, 331
BAYLEY, HON'BLE SIR E. C., appointed to Select Committee ... 35, 45, 79, 192, 336
BENARES, HIS HIGHNESS THE MAHÁRÁJÁ OF,
Native Coinage Bill 31
BENARES, HIS HIGHNESS THE MAHÁRÁJÁ OF, appointed to Select Committee ... 35
BHAUNAGAR THÁKURS BILL.
Motion for leave to introduce 354
Application for suspension of rules 371
Rules suspended ... ... *ib.*
Bill introduced and considered ... ... *ib.*
Bill passed ... ... *ib.*
BOMBAY MUNICIPAL DEBENTURES BILL.
Motion for leave to introduce 154
Introduced and referred to Select Committee 190
Motion to publish Bill ... ... *ib.*
Select Committee appointed 192
" " report presented 210
" " " considered 220
Bill passed ... ... *ib.*
BOMBAY REVENUE JURISDICTION BILL.
Select Committee report (*final*) presented 79
" " " " considered 84
Bill passed 97
BURMA FOREST BILL.
Motion for leave to introduce 330
Introduced and referred to Select Committee 353
Select Committee appointed 371
BURMA LABOUR CONTRACT BILL.
Select Committee report (*final*) presented 6
" " " " considered 9
Bill passed 12
BURMA LAND REVENUE BILL.
Select Committee report presented 2
" " " considered 3
Bill passed 5

Page.

C.

CARRIAGES.—See *Stage Carriages.*

CHUTIA NÁGPUR INCUMBERED ESTATES BILL.

Motion for leave to introduce 6
Introduced and referred to Select Committee 15
Motion to publish Bill 16
Select Committee appointed ... ... *ib.*
" " report presented 35
" " " considered 37
" " " consideration postponed 43
" " " (*final*) presented 47
" " " " considered 63
Bill passed 64

CIVIL APPEALS BILL.

Select Committee added to 79

CIVIL PROCEDURE BILL.

Select Committee added to 79, 215
" " report presentation postponed 209
" " " (*further*) presentation postponed ... 221
" " " " presented 229
Motion to publish Bill No. IV and further report 246

CLARKE, COLONEL THE HON'BLE SIR A.,

Indian Railways Bill 209, 226, 227
Merchant Seamen's Bill 170, 171
Registration Act Amendment Bill 188

CLARKE, COLONEL THE HON'BLE SIR A., appointed to Select Committee ... 227

COASTING STEAMERS. See *Native Passenger Ships.*

COCKERELL, HON'BLE F. R.,

Civil Procedure Bill 246, 279
Criminal Tribes Act Extension Bill 71
Dramatic Performances Bill 345
Presidency Banks Bill 138, 142
Registration Act Amendment Bill ... 157, 174, 186, 187, 188, 195
Took his seat as an Additional Member 63

COCKERELL, HON'BLE F. R., appointed to Select Committee 79, 90, 91, 192, 215, 227, 336, 371

CODE. See *Civil Procedure, Presidency Police Magistrates.*

COINAGE. See *Native Coinage.*

CONSOLIDATION OF LAWS. See *Burma Forest, Civil Procedure, General Forest, Indian Railways, Native Passenger Ships, Opium, Oudh Land Revenue, Pleaders, Mukhtárs and Revenue Agents, Sea Customs.*

CONTRACT. See *Burma Labour.*

Page.

COUNCIL OF THE GOVERNOR GENERAL FOR MAKING LAWS AND REGULATIONS—
Meetings of ... ... 1, 3, 9, 17, 29, 37, 47, 63, 81, 93, 133, 135, 147, 161, 193, 199, 209, 217, 229, 281, 291, 305, 317, 337, 373.
Adjournment of ... ... 2, 7, 16, 28, 35, 45, 62, 79, 91, 132, 133, 145, 160, 192, 197, 207, 215, 227, 280, 290, 303, 316, 336, 371, 375.

COWIE, HON'BLE D., appointed to Select Committee 144, 316

CRIMINAL PROCEDURE. See *Presidency Police Magistrates.*

CRIMINAL TRIBES ACT EXTENSION (LOWER PROVINCES) BILL.
Motion for leave to introduce 29
Introduced and referred to Select Committee 43
Motion to publish Bill 44
Select Committee appointed 45
" " report presented 48
" " " considered 64
Amendment moved 65
Select Committee report (*further*) consideration postponed ... 73
Motion to pass Bill 81
Amendment proposed and adopted 82
Bill passed ... ... *ib.*

CUSTOMS. See *Sea Customs.*

D.

DALYELL, HON'BLE R. A.,
Opium Bill 322

DALYELL, HON'BLE R. A., appointed to Select Committee 316, 336

DAVIES, HON'BLE SIR R. H., See *Lieutenant Governor of Panjáb.*

DEBATES IN COUNCIL.
Bhaunagar Thákurs Bill ... ... 354—70
Bombay Revenue Jurisdiction Bill ... ... 84—90, 97—132
Burma Labour Contract Bill ... ... 9—12
Chutia Nágpur Incumbered Estates Bill ... ... 15, 37—43
Civil Procedure Bill ... ... 229—280
Criminal Tribes Act Extension Bill ... 43, 44, 48, 49, 64—73, 81, 82
Dramatic Performances Bill ... ... 82, 83, 337—52
Indian Museum Bill... ... ... 373—75
Merchant Seamen's Bill ... ... 161—172
Native Coinage Bill ... ... 30—32
Opium Bill ... ... 317—29
Oudh Land Revenue Bill ... . 199—202, 291—302
Presidency Banks Bill ... ... 135—42
Reformatory Schools Bill ... ... 49—61
Registration Act Amendment Bill ... 155—59, 172—88, 195, 196
Revenue Agents' Bill ... ... 12—15, 17—25

Page.

DEBENTURES. See *Bombay Municipal.*
DEPARTURE. See *Northbrook.*
DIG-BIJAY SINGH, THE HON'BLE MAHÁRÁJÁ SIR,
Oudh Land Revenue Bill 297
Took his seat as an Additional Member 281
DIG-BIJAY SINGH, THE HON'BLE MAHÁRÁJÁ SIR, appointed to Select Committee 215
DRAMATIC PERFORMANCES BILL.
Motion for leave to introduce 73
Introduced and referred to Select Committee 82
Select Committee appointed 91
" " added to 316
" " report presented 331
" " " considered 337
Amendment proposed and negatived 351
Bill passed ... ... *ib.*
DUES. See *Madras Harbour Dues.*

E.

EDEN, HON'BLE ASHLEY,
Burma Labour Contract Bill 11
Burma Land Revenue Bill 2, 3, 5
EMIGRATION. See *Straits Settlements.*
ESTATES. See *Chutia Nágpur, Kaira, Sindh.*
EXTENSION. See *Criminal Tribes, Presidency Police Magistrates.*

F.

FOREST. See *Burma Forest, General Forest.*

G.

GENERAL FOREST BILL.
Motion for leave to introduce postponed 353
GOVERNOR GENERAL (*Right Hon'ble Baron Northbrook*).
Bombay Revenue Jurisdiction Bill 89, 129
Chutia Nágpur Incumbered Estates Bill 15, 42, 43
Criminal Tribes Act Extension Bill 49, 73
Lord Northbrook's departure 145
Native Coinage Bill 32
Presidency Banks Bill 142
Reformatory Schools Bill 53
GOVERNOR GENERAL (*Right Hon'ble Lord Lytton*).
Bhaunagar Thákurs Bill 371
Dramatic Performances Bill 352
Merchant Seamens Bill 170, 172
Oudh Land Revenue Bill 202, 297
Registration Act Amendment Bill 185, 188, 195

Page

H.

HARBOUR DUES See *Madras Harbour*
HOBHOUSE, HON'BLE SIR ARTHUR,
Bhaunagar Thákurs Bill 354, 370, 371
Bombay Revenue Jurisdiction Bill 86, 110
Burma Labour Contract Bill 6, 9, 12
Chutia Nagpur Incumbered Estates Bill 41
Civil Appeals Bill ... 79
Civil Procedure Bill 79, 209, 215, 221, 229
Dramatic Performances Bill 73, 82, 316, 331, 337, 351
Indian Museum Bill 374
Indian Telegraph Bill 1, 2
Land Improvement Bill 211, 214, 352, 373
Merchant Seamen's Bill 79, 90, 144, 155, 161, 171, 172
Native Passenger Ships Bill 6, 9, 93, 95
Obsolete Enactments Repeal Bill 133, 142, 144
Opium Bill . 90, 325
Oudh Land Revenue Bill 79, 215
Oudh Laws Bill ... 79, 90, 203, 281, 289, 291, 303
Presidency Banks Bill 139
Presidency Police Magistrates Bill 90
Reformatory Schools Bill 57
Registration Act Amendment Bill 155, 159, 172, 184, 186, 188, 316, 31, 352
Revenue Agents Bill 12, 17, 25
Specific Relief Bill ... 79, 305, 316
Straits Settlements Emigration Bill 221, 226
HOBHOUSE, HON'BLE SIR ARTHUR, appointed to Select Committee 16, 35, 45, 79, 91, 192, 215, 227, 316, 336, 371
HOPE, HON'BLE T C,
Bhaunagar Thákurs Bill . 363, 370
Bombay Municipal Debentures Bill . . 154, 190, 210, 220
Bombay Revenue Jurisdiction Bill 79, 84, 97
Burma Forest Bill 330, 353
Chutia Nágpur Incumbered Estates Bill 40
Civil Procedure Bill ... 262, 279
General Forest Bill 353
Kaira Thákurs Incumbrances Bill 353
Opium Bill 312, 317, 328, 329
Presidency Police Magistrates Bill . 32, 144, 147, 312
Reformatory Schools Bill 58
Registration Act Amendment Bill 183, 331
Sea Customs Consolidation Bill 313, 336
Sindh Incumbered Estates Bill 28, 150, 189, 190, 211, 217, 220
HOPE, HON'BLE T C, appointed to Select Committee 16, 192, 215, 227, 316, 336, 371

Page.

I.

IMPROVEMENT. See *Land Improvement.*
INCUMBERED ESTATES. See *Chutia Nágpur, Kaira Thákurs, Sindh.*
INDIAN MUSEUM BILL.
Motion for leave to introduce 61
Introduced and referred to Select Committee... 76
Select Committee appointed 79
" " report presented 84
" " " consideration postponed 96, 133
" " " *(final)* presented 352
" " " " considered 373
Bill passed 375
INDIAN RAILWAYS BILL.
Motion for leave to introduce 209
Introduced and referred to Select Committee 226
Motion to publish Bill 227
Select Committee appointed ... ... *ib.*
INDIAN REGISTRATION. See *Registration Act Amendment.*
INDIAN TELEGRAPH BILL.
Select Committee report considered 1
Bill passed 2
INDUSTRIAL. See *Reformatory Schools.*
INGLIS, HON'BLE J. F. D.,
Chutia Nágpur Incumbered Estates Bill 42
Criminal Tribes Act Extension Bill 65, 81
Oudh Land Revenue Bill 191, 291, 297
Oudh Laws Bill 191
INGLIS, HON'BLE J. F. D., appointed to Select Committee ... 16, 90, 91, 192
ISWARIPARSHAD NARAYAN SINGH. See *Benares.*

J.

JÁGÍRDÁRS. See *Sindh Incumbered Estates.*
JURISDICTION. See *Bombay Revenue Jurisdiction.*

K.

KAIRA THÁKURS INCUMBRANCES BILL.
Motion for leave to introduce postponed 353

L.

LABOUR CONTRACT. See *Burma Labour Contract.*
LAND IMPROVEMENT BILL.
Introduced and referred to Select Committee... 211
Motion to publish Bill 214

Page.

LAND IMPROVEMENT BILL,—*continued.*
Select Committee appointed 215
" " report presented 352
" " " considered 373
Bill passed ... ... *ib.*

LAND REVENUE. See *Burma Land Revenue, Oudh Land Revenue.*

LAWS. See *Oudh Laws.*

LIEUTENANT-GOVERNOR OF BENGAL (*Hon'ble Sir R. Temple*).
Burma Labour Contract Bill 12
Chutia Nágpur Incumbered Estates Bill ... 6, 15, 16, 35, 37, 42, 47, 63, 64
Criminal Tribes Act Extension Bill 29, 43, 44, 48, 64, 70, 81
Dramatic Performances 348
Presidency Banks Bill 137, 138, 141, 142
Reformatory Schools Bill 55
Revenue Agents Bill 14, 22

LIEUTENANT-GOVERNOR OF BENGAL (*Hon'ble Sir R. Temple*) appointed to Select Committee 16, 45

LIEUTENANT-GOVERNOR OF PANJÁB (*Hon'ble Sir R. H. Davies*).
Oudh Land Revenue Bill 199

LIEUTENANT-GOVERNOR OF PANJÁB (*Hon'ble Sir R. H. Davies*) appointed to Select Committee 160, 191

LOWER PROVINCES. See *Criminal Tribes.*

M.

MADRAS HARBOUR DUES BILL.
Motion for leave to introduce 221

MAGISTRATES. See *Presidency Police.*

MAHÁRÁJÁ. See *Balrámpur, Benares, Vizianagram.*

MEETINGS. See *Council of the Governor General.*

MEMBERS (*new*). See *New Members.*

MERCHANT SEAMEN'S ACT AMENDMENT BILL.
Select Committee added to 79, 90, 144
" " report presentation postponed 144
" " " presented 155
" " " considered 161
Bill passed 172

MOTIONS negatived 351
postponed 9, 28, 43, 73, 79, 96, 133, 144, 191, 193, 209, 221, 312, 331, 353
withdrawn 82, 188

MUIR, HON'BLE SIR W.,
Civil Procedure Bill 274
Merchant Seamens Bill 172
Native Coinage Bill 25, 30, 32, 79, 96

Page.

MUIR, HON'BLE SIR W.,—*continued.*
Opium Bill 79, 160, 191, 193
Presidency Banks Bill 77, 135, 138, 142
Registration Act Amendment Bill 182, 197
MUIR, HON'BLE SIR W., appointed to Select Committee 35, 227

MUKHTÁRS. See *Revenue Agents.*

MUNICIPAL. See *Bombay Municipal Debentures.*

MUSEUM. See *Indian Museum.*

N.

NÁGPUR. See *Chutia Nágpur Incumbered Estates*

NARENDRA KRISHNA, HON'BLE RÁJÁ,
Chutia Nágpur Incumbered Estates Bill 39
Criminal Tribes Act Extension Bill 48, 64, 70, 73
Dramatic Performances Bill 83, 344, 351
Presidency Banks Bill 136
Reformatory Schools Bill 58, 59
Revenue Agents' Bill 22
NARENDRA KRISHNA, HON'BLE RÁJÁ, appointed to Select Committee ... 91, 336

NATIVE COINAGE BILL.
Motion for leave to introduce 25
Introduced and referred to Select Committee 30
Motion to publish Bill 32
Select Committee appointed 35
" " report presented 79
" " " considered 96
Bill passed ... ... *ib.*

NATIVE LABOURERS. See *Burma Labour Contract.*

NATIVE PASSENGER SHIPS ACTS CONSOLIDATION BILL.
Select Committee report (*final*) presented 6
" " " " consideration postponed 9
" " reports considered 93
Bill passed 95

NEW MEMBERS.
Hon'ble F. R. Cockerell 63
" the Mahárájá Sir Dig-Bijay Singh 281

NORMAN, MAJOR GENERAL THE HON'BLE SIR H. W.,
Dramatic Performances Bill 352
Lord Northbrook's departure 144

NORTHBROOK, departure of Lord, ... 144

Page.

O.

OBSOLETE ENACTMENTS REPEAL BILL.

Select Committee report presented 133
" " " considered 142
Bill passed 111

OPIUM BILL.

Select Committee report presentation postponed 79, 191
" " added to 90, 91, 160
" " report presented 193
Republication of Bill 194
Select Committee report (*final*) presented 312
" " " " considered 317
Bill passed 329

OUDH LAND REVENUE BILL.

Select Committee added to 79, 191, 215
" " report presented 199
" " " (*final*) presented 291
" " " " considered 297
Bill passed ... ... *ib.*

OUDH LAWS BILL.

Select Committee added to 79, 90, 191
" " report presented 203
" " " (*final*) presented 281
" " " " considered 289
Bill passed 291, 303

P.

PASSENGER SHIPS. See *Native Passenger Ships.*

PERFORMANCES. See *Dramatic Performances.*

PLEADERS, MUKHTÁRS. See *Revenue Agents.*

POLICE. See *Presidency Police Magistrates.*

POSTPONEMENT of consideration of final report of Select Committee on Native Passenger Ships Consolidation Bill 9
of motion for leave to introduce Sindh Incumbered Estates Bill .. 28
of further consideration of report of Select Committee on Chutia Nágpur Incumbered Estates Bill 43
of further consideration of report of Select Committee on Criminal Tribes Act Extension Bill 73
of presentation of report of Select Committee on Opium Bill ... 79
of consideration of report of Select Committee on Indian Museum Bill 96, 133

Page.

POSTPONEMENT—*continued.*

of presentation of report of Select Committee on Merchant Seamen's Bill 144
of presentation of report of Select Committee on Presidency Police Magistrates Bill 144
of motion for leave to introduce Treasure-trove Bill ... 191, 193
of presentation of report of Select Committee on Opium Bill ... 191
of presentation of further report of Select Committee on Civil Procedure Bill 209, 221
of presentation of final report of Select Committee on Presidency Police Magistrates Bill 312
of presentation of report of Select Committee on Indian Registration Bill 331
of motion for leave to introduce General Forest Bill ... 353
of „ „ „ Kaira and Broach Thákurs Bill 353

PRESIDENCY BANKS BILL.

Select Committee report presented 77
„ „ „ (*final*) presented and considered ... 135
Bill passed 142

PRESIDENCY POLICE MAGISTRATES BILL.

Select Committee report (*further*) presented 32
Motion to publish Bill No. II and further report 35
Select Committee added to 90
„ „ report presentation postponed 144
„ „ „ (*further*) presented 147
Motion to publish Bill 147
Select Committee report (*final*) presentation postponed 312

PRESIDENT. See *Governor General, Norman, Sir H. W.*

PUBLICATION OF BILLS.

Bombay Municipal Debentures Bill 190
Chutia Nágpur Incumbered Estates Bill 16
Civil Procedure Bill No. IV and further report . .. 246
Criminal Tribes Act Extension Bill 44
Indian Railways Bill 227
Land Improvement Bill .:. 214
Native Coinage Bill 32
Opium Bill 194
Presidency Police Magistrates Bill No. II and further report ... 35, 147
Registration Act Amendment Bill 188
Sindh Incumbered Estates Bill 190
Stage Carriages Act Amendment Bill 191
Straits Settlements Emigration Bill 226

Page.

R.

RAILWAY. See *Indian Railways.*

REFORMATORY SCHOOLS BILL.

Select Committee report presented 44
" " " considered 49
Bill passed 53

REGISTRATION ACT AMENDMENT BILL.

Motion for leave to introduce 155
Introduced and referred to Select Committee 172
Amendment moved 186
" withdrawn 188
Motion to publish Bill 188
Select Committee appointed 192
Explanation of statements in former debate 195
Select Committee added to 316
" " report presentation postponed 331
" " " presented 352

RELIEF. See *Specific Relief.*

REVENUE. See *Burma Land Revenue, Oudh Land Revenue.*

REVENUE AGENTS BILL.

Select Committee report presented 12
" " " considered 17
Bill passed 25

REVENUE JURISDICTION. See *Bombay.*

RULES FOR THE CONDUCT OF BUSINESS. See *Suspension.*

S.

SCHOOLS. See *Reformatory Schools.*

SEA CUSTOMS CONSOLIDATION BILL.

Introduced and referred to Select Committee 313
Select Committee appointed 316
" " added to 336

SELECT COMMITTEE.

Additions to 79, 90, 91, 144, 160, 191, 215, 316, 336
Postponement of presentation of report of, . 79, 144, 191, 209, 221, 312, 331
" of consideration of report of, ... 9, 43, 73, 96, 133

SELECT COMMITTEES.	Appointed.	Report presented.	Report considered.
Bombay Municipal Debentures Bill	192	210	220
Bombay Revenue Jurisdiction Bill (*final*)	...	79	84
Burma Forest Bill	371	...	...
Burma Labour Contract Bill (*final*)	...	6	9
Burma Land Revenue Bill	...	2	3
Chutia Nágpur Incumbered Estates Bill (*final*)	16	35 47	37 63
Civil Procedure Bill (*further*)	...	229	...
Criminal Tribes Act Extension Bill	45	48	64
Dramatic Performances Bill	91	331	337
Indian Museum Bill (*final*)	79	84 352	373
Indian Railways Bill	227	...	...
Indian Telegraph Bill	...	...	1
Land Improvement Bill	215	352	373
Merchant Seamen's Bill	...	155	161
Native Coinage Bill	35	79	96
Native Passenger Ships Consolidation Bill (*final*)	...	6	93
Obsolete Enactments Repeal Bill	...	133	142
Opium Bill (*final*)	...	193 312	317
Oudh Land Revenue Bill (*final*)	...	199 291	297
Oudh Laws Bill (*final*)	...	203 281	289
Presidency Banks Bill (*final*)	...	77 135	135
Presidency Police Magistrates Bill (*further*)	...	32 147	...
Reformatory Schools Bill	...	44	49
Registration Act Amendment Bill	192	352	...
Revenue Agents' Bill	...	12	17
Sea Customs Consolidation Bill	316	...	...
Sindh Incumbered Estates Bill	192	211	217
Specific Relief Bill	...	305	...
Stage Carriages Act Amendment Bill	192	280	290
Straits Settlements Emigration Bill	227	...	...
Treasure-Trove Bill	336	...	...

	Page.
SINDH INCUMBERED ESTATES BILL.	
Motion for leave to introduce postponed	28
Motion for leave to introduce	150
Introduced and referred to Select Committee...	189
Motion to publish Bill	190
Select Committee appointed	192
" " report presented	211

Page.

SINDH INCUMBERED ESTATES BILL,—*continued.*
Select Committee report considered 217
Bill passed 220
SMITH, HON'BLE J. R. BULLEN,
Presidency Banks Bill 137, 142
SMITH, HON'BLE J. R. BULLEN, appointed to Select Committee ... 35, 144, 227, 316
SPECIFIC RELIEF BILL.
Select Committee added to 79, 316
" " report presented 305
STAGE CARRIAGES ACT AMENDMENT BILL.
Motion for leave to introduce 160
Introduced and referred to Select Committee 190
Motion to publish Bill 191
Select Committee appointed 192
" " report presented 280
" " " considered 290
Bill passed ... ... *ib.*
STRAITS SETTLEMENTS EMIGRATION BILL.
Introduced and referred to Select Committee 221
Motion to publish Bill 226
Select Committee appointed 227
SUSPENSION OF RULES FOR THE CONDUCT OF BUSINESS 371

T.

TELEGRAPHS. See *Indian.*
TEMPLE. See *Lieutenant Governor.*
THÁKURS. See *Bhaunagar, Kaira.*
TOWNS. See *Presidency-towns.*
TREASURE-TROVE BILL.
Motion for leave to introduce postponed 191, 193
Motion for leave to introduce 312
Introduced and referrpd to Select Committee 331
Select Committee appointed 336

V.

VIZIANAGRAM, HIS HIGHNESS THE MAHÁRÁJÁ OF,
Native Coinage Bill 31
Reformatory Schools Bill 60
VIZIANAGRAM, HIS HIGHNESS THE MAHÁRÁJÁ OF, appointed to Select Committee 35

Z.

ZAMÍNDÁRS. See *Sindh Incumbered Estates.*

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BENGAL SECRETARIAT LIBRARY

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 *Vic., cap.* 67.

The Council met at Government House on Tuesday, the 4th January 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

The Hon'ble J. R. Bullen Smith, C. S. I.

The Hon'ble John Inglis, C. S. I.

The Hon'ble Sir Douglas Forsyth, C. B., K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rájá Narendra Krishna Bahádur.

INDIAN TELEGRAPH BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to amend the law relating to Telegraphs in India be taken into consideration. He said that this was a Bill which was introduced into the Council in last July for the purpose of amending the defects in the laws which he had explained at the time. The Council would recollect that there were two previous Acts passed on the subject, the one in 1854 and the other 1860; and owing to an oversight in the Act of 1860 it was found that the Government could not make rules to regulate telegraphs which were worked under licenses granted under the Act of 1854. That fact was brought to their notice by the Advocate General, who had also drafted some clauses for the purpose of remedying it. That was the principal cause for introducing this Bill. At the same time the opportunity had been taken to bring the penalty clauses into accord with the Penal Code, which had been passed subsequently to the Act of 1860. In that state the Bill went to the Committee. The Committee made a few alterations which were all detailed in the Report. They consisted

almost entirely of some amendments of the law with the view of preventing fraudulent tampering with the telegraph and the abstraction of messages, which we were told was an evil to be carefully guarded against in times of commercial excitement. The alterations made by the Committee were nearly all matters of detail and were described in the Report, and he did not think he need go into them further, because there was not one of them of sufficient importance to call for explanation to the Council.

The Motion was put and agreed to.

The Hon'ble MR HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

BURMA LAND REVENUE BILL.

The Hon'ble MR. EDEN presented the Report of the Select Committee on the Bill to declare the law relating to interests in land, and to regulate the assessment and collection of land-revenue, capitation-tax and other taxes in British Burma.

The Council then adjourned to Tuesday, the 18th January 1876.

CALCUTTA,
The 4th January 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department

Office of Supdt. of Govt. Printing,—No. 341 L D—6 1 76 4,320

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

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PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.

His Honour the Lieutenant-Governor of Bengal.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble John Inglis, C. S. I.

The Hon'ble Sir Douglas Forsyth, K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rájá Narendra Krishna Bahádur.

BURMA LAND REVENUE BILL.

The Hon'ble MR. EDEN moved that the Report of the Select Committee on the Bill to declare the law relating to interests in land and to regulate the assessment and collection of land-revenue, capitation-tax and other taxes in British Burma be taken into consideration. In February last, he had obtained leave to introduce this Bill. At that time he had explained that its object was not to alter in any way the system of revenue administration in Burma, nor to impose new taxes or alter or interfere with the position of landholders and the interests they held in land. But the object was to bring within the scope of one law all matters connected with the revenue administration which had theretofore been managed by rules prescribed from time to time by the local administration. Those rules had been changed frequently to meet the growing requirements of the province; they had become confused and indistinct, and some of them had become obsolete. Under these circumstances, the Government of India four years ago ordered that the whole subject should be taken

into consideration, and a draft Bill prepared for regulating these matters by law instead of by rules. A Committee was appointed composed of officers of great local and revenue experience, and by them a draft Bill was prepared. During the discussions which arose out of their enquiry, a number of questions cropped up connected with various interests in the land which the people possessed, and these were ultimately referred home to the Secretary of State by the Government of India. In due course the Secretary of State affirmed the views of the local administration and the Government of India. The Bill was revised by a Select Committee of this Council and was returned to Burma with a request that the Chief Commissioner would, after consulting the local officers on the subject, send in a further report. This had now been done, and we had received the report of the Chief Commissioner, with the opinions of the officers who had been consulted. The report was carefully considered by the Select Committee, who had adopted nearly all the alterations recommended by the Chief Commissioner and the Judicial Commissioner. The Bill as it now stood would, he thought, entirely meet the views of the local administration.

The second Part of the Bill contained the law relating to the rights over land which were based partly upon custom and partly on the old Buddhist law as adopted by Sir Arthur Phayre; they were of a very simple nature, and were declared in sections 7 to 9, by which it would be seen that any person who occupied land for twelve years continuously acquired the status of a landholder, and such occupation gave him a heritable and transferable right of use and occupancy in the land. There was one class of interests in land peculiar to Burma, and which was dealt with in sections 9 to 14. Under the existing practice, which this Bill proposed to confirm, any person who once acquired the status of a landholder might retain his interest in the land even if he left it and disappeared for twelve years. In practice, constant disputes and much misunderstanding were caused by persons leaving their land without giving any sign of their intention to return, and then coming back after a number of years and claiming to be put in possession, the land having in the meantime passed into the possession of others, who probably had never heard of the claimant as an occupier. To remedy this state of things, the Bill contained new provisions under which, when any person desired to leave his land with an intention to return, he could do so by giving notice to the revenue officer and registering his intention. Having done so, he could come back within twelve years and claim to be put in possession, certain precautions being taken with regard to the interests of temporary tenants; failing this notice, he lost his lien in the land. As the proposed change in the law might

cause some inconvenience, three years' time was allowed to persons who were now absent from their lands to come in and claim to be put in possession of the land which they had so left vacant.

Section 15 was a section which would confer great benefit on the holders of land. At present there was no system under which a person could obtain a legal document showing his right to the land. Everything was now settled by the tax-collector's roll showing the occupation for the year. Under this section twelve years' occupancy would admit a person to the right of registry as a landholder.

By the 17th section, the Select Committee had arranged that all questions concerning the status of landholders should be decided by the revenue officials, and where a question of landholder's right to land was brought before a civil Court, it was directed to refer it to the revenue officers to decide whether a claimant had acquired the status of a landholder or not.

The third Part of the Bill related to the assessment and collection of revenue and taxes. MR. EDEN must explain that none of these taxes were new, and that they were all in force under the existing rules. The capitation-tax, the land-revenue, and the five per cent. cess were all now in force at the rates laid down in this Bill. There was nothing in the proposed law which in any way increased taxation.

The last Part of the Bill related to the collection of taxes and the recovery of rent, which had been arranged for by as simple a process as possible. When the assessment fell due, a notice was served on the defaulter, giving him ten days' time to appear and answer, and if he failed to do so, he was treated as a defaulter, and a proceeding was instituted before the Revenue Court for the recovery of the rent or tax. In the section which related to the recovery of rent from the land itself, the right of every landholder who had acquired a status by twelve years' occupancy had been carefully guarded; so that if he became a defaulter and the land was taken possession of by the Government, his right would be put up to auction, and any excess obtained beyond the debt due by him would be paid over to him. MR. EDEN did not think that there were any other parts of the Bill calling for special notice. In fact the Bill was really based on the system as it now existed.

The Motion was put and agreed to.

The Hon'ble MR. EDEN also moved that the Bill as amended be passed.

The Motion was put and agreed to.

NATIVE PASSENGER' SHIPS' BILL.

The Hon'ble MR. HOBHOUSE presented the Final Report of the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers.

BURMA LABOUR CONTRACT BILL.

The Hon'ble MR. HOBHOUSE also presented the Final Report of the Select Committee on the Bill to regulate the transport of Native labourers to British Burma, and their employment therein.

CHUTIA NAGPUR INCUMBERED ESTATES BILL.

His Honour THE LIEUTENANT-GOVERNOR moved for leave to introduce a Bill to relieve from incumbrances certain estates in Chutia Nágpur. He said that when last year we were examining into the general condition of affairs in this rather important province on the frontiers of Bengal, we found a number of large landholders, virtually in the position of Native Chiefs, much in the same sort of position as taluqdárs in other parts of India. In Chutia Nágpur and elsewhere, we found that these Chiefs were falling into a serious state of indebtedness, which condition occasionally brought them into civil litigation, and ultimately placed them in the danger of having their estates sold for default. The mischief of such a state of things in a hilly country was obvious. The political effect was bad, of such important Chiefs, with a good deal of territorial authority, falling into debt, and disputes were likely to arise between the new proprietor who might have purchased the property and the tenantry who were too rude and uncivilized to understand the merits and utility of the transfer of land, and on the whole the political and social consequence of such sales taking place were much to be deprecated. In the earlier days, before 1859, the local authorities used to prevent such disadvantages in a summary manner; that was to say, when a Chief was approaching a state of bankruptcy, the local officers used to take up his affairs, including the management of the estate. They would stop all action of the ordinary Courts, have a schedule prepared of the debts after ascertaining their amount, arrange for their gradual liquidation, and prevent the Chief from incurring fresh debts, intermediately providing a respectable amount for his maintenance. But after 1859, this simple procedure became no longer lawful. In that year, the Civil Procedure Code was passed, and it had not since been possible to effect such arrangements. The local authorities from time to time endeavoured, in an indirect way and by the exercise of their influence, to prevent these Chiefs getting into debt, and did as much as they could in that way. But it was quite clear that in these

days, when the reign of law became stricter and stricter, it was no longer possible for the local authorities to interfere unless they were armed with legal powers. That being the case, it became desirable to consider whether such a state of things could not be properly remedied. The case of Oudh, which was almost similar, seemed to furnish a proper precedent. By Act XXIV of 1870, an exactly similar process was established in Oudh for the relief of encumbered estates of the taluqdárs of that province, and he believed that its principle was held to be conducive to the welfare of the landed aristocracy of that province, the Bengal Government was desirous of having a similar law for the Chiefs of Chutia Nágpur. So, if His Lordship and the Council would permit him, His Honour would introduce a Bill for Chutia Nágpur, framed exactly on the model of the Act passed for Oudh.

The Motion was put and agreed to.

The Council then adjourned to Tuesday, the 25th January 1876.

CALCUTTA,
The 18*th January* 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department

Office Supdt Govt Printing—No 277 L D—26-1 76—230

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 25th January 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *Presiding.*

His Honour the Lieutenant-Governor of Bengal.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble J. R. Bullen Smith, C. S. I.

The Hon'ble John Inglis, C. S. I.

The Hon'ble Sir Douglas Forsyth, C. B., K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rájá Narendra Krishna Bahádur.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the motion that the Final Report of the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers be taken into consideration.

Leave was granted.

BURMA LABOUR CONTRACT BILL.

The Hon'ble MR. HOBHOUSE moved that the final Report of the Select Committee on the Bill to regulate the transport of Native labourers to British Burma and their employment therein be taken into consideration. This was a matter upon which he need not detain the Council any length of time, because the alterations made in the original Bill were fully explained by him to the Council on presenting the first Report of the Committee,

and there had been exceedingly little alteration since. The Bill was introduced so long ago as the month of August 1873, and he had before explained to the Council why it was not proceeded with. The reason, stated shortly again, was this, that when the Bill was introduced, there was no regular system of emigration into Burma. It had not been before the Council very long when the Bengal famine came, and with the famine a system of emigration to Burma was set up. The consequence was, that the Government of British Burma, which was then presided over by his hon'ble friend Mr. Eden, desired the Council to hold their hands in order that we might get experience of the actual working of emigration to Burma. Well, now that experience had been gained and the system so set up for emigration had proved satisfactory to the Government of British Burma, and the result was a considerable alteration of the basis on which the original Bill was framed. The basis of the original Bill proceeded entirely upon a private contract between the labourer and the employer. The basis of the present Bill was a contract between the labourer and the Government, or, to put it more technically, between the labourer and the Secretary of State in Council, who, for all purposes of contract and purchase, represented the Indian public. MR. HOBHOUSE had before explained to the Council the effect and extent of that alteration, and showed that it led to a considerable change in the details of the Bill. Well, that alteration was made in July last. The Report of the Select Committee was published, and they had since received comments on the new Bill. The result was a very general agreement that the Bill was calculated to effect the objects desired by the Government. The only alteration of any importance that had been made since the publication in July last was this, that the Committee had again reverted to the system of private contracts so far as to admit the possibility of a labourer proceeding from India to Burma in order to serve a particular employer. The Bill still provided that the contract should be with the Secretary of State, but instead of being a contract to serve wherever the Chief Commissioner should direct, it was a contract to serve a particular employer in a particular place, and a provision was inserted whereby an employer who received the services of that labourer should be bound to repay to the Government all the expenses which the Government had incurred in importing the labourer into Burma. These expenses would be provided for, in the first instance, by some special bargain to be made on the assignment of the labourer to his employer. Gradually, as experience accumulated, it would be found what was the proper mode of regulating the transaction with the employer; and the Bill had given the Local Government power to make rules for the purpose of regulating these assignments. There were some other alterations of detail,

but they were few and unimportant, and were all mentioned in the Report, and there was nothing else which called for any explanation.

The Hon'ble MR. EDEN, having a special interest in British Burma, thought it but right to say that the Bill, as settled by the Committee, appeared to him in every way adapted to meet the requirements of the Province. It appeared from the correspondence received from the local authorities of Burma, that there was some misapprehension as to the manner in which it was intended to work this Bill. There seemed to be a doubt whether any interference of the State by law would introduce into the country any great amount of labour. The present system of importing labourers, which had been alluded to by the Hon'ble Member, no doubt had been the means of bringing into the country a large increase of labour. But it had failed, partly from the difficulty of procuring good labourers ready to go from this side of India to Burma, and partly from the great cost of recruiting and sending them there. The consequence was that the men arrived in the country with a heavy load of debt, which they found it difficult to pay, and in many cases the amount advanced by the State was not recovered. But his object in now pressing for this Bill was chiefly to enable the Government of Burma to recruit in other fields. The circumstances of the Northern Ports of Madras were entirely different from the labour markets of Bengal. The people of the Northern Districts of Madras had long been in the habit of going to seek labour in Burma, but unfortunately they were exposed to great difficulty, oppression, and mismanagement under the system by which they were now transported and employed. At present they were put on board of Native ships, or it might be coasting steamers, without any contract or without any means of paying for their passage; they remained on board until their services were purchased by Native contractors who came on board, and on their paying the passage-money obtained from them an agreement to serve them for a very long period and on very low terms: and in one way or another these men managed to keep the labourers in their hands and deprive them of the real value of their labour. What he supposed would at once be done under this Bill was that the Chief Commissioner would appoint an Agent in the Northern Madras Ports, who would be in the same position as the Emigration Agent lately employed in Calcutta, and he would see the labourers put on board and arrange for their passage under a proper system; and as soon as they arrived in Burma, the Immigration Agent there would assign their labour and see that the men obtained the full value of their labour in the local market, without the interference of any middlemen. He thought that as soon as that was done there would be an enormous increase in the number of labourers, and they would get rid of the present system, which was open to very great objection.

The only substantial objection which had been raised to the Bill by the employers of labour was that which had been alluded to by his hon'ble friend Mr. Hobhouse, namely, the power they desired to have of sending their own agents to Madras and elsewhere to recruit labourers for themselves. That objection had now been entirely met, and while we left the present system of free emigration entirely untouched, MR. EDEN thought that the Bill as it now stood would enable the Local Government to introduce into Burma a large amount of labour to the great benefit of the province, and to the great advantage of the overstocked districts of Madras

His Honour THE LIEUTENANT-GOVERNOR, like the hon'ble member who had just addressed the Council, also had a special interest in this Bill; and he thought it right to express in general terms his entire concurrence in the objects and purport of the Bill. It was desirable that a certain proportion of the surplus labour in Bihár should be deported to the rich and comparatively untouched fields of employment in British Burma; and therefore it was most important that there should be appointed an Agent on behalf of the administration of Burma who should make arrangements in this country with labourers. With respect to emigration to the West Indian Colonies, one difficulty had been felt in that no proper contract could be entered into with the labourers in this country. The want had been felt regarding our colonial experience of the means and machinery whereby a contract could be made with the labourers before leaving Indian shores. No doubt if emigration to Burma was to prosper, the same want would be felt; and he observed with satisfaction that this Bill provided for these two particulars—*first*, that there should be Agents on behalf of the Government of Burma to make arrangements for Bengal labourers; and *secondly*, that the Agents should have power to enter into satisfactory contracts with the men in this country before leaving their homes. With that general observation, HIS HONOUR on behalf of the Bengal interests involved in these particulars begged to express his entire approval of the Bill.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill as amended be passed

The Motion was put and agreed to.

PLEADERS, MUKHTÁRS AND REVENUE AGENTS' BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Pleaders, Mukhtárs and Revenue Agents in Northern India. He was not about to make any motion, but as the Bill had assumed now a very shrunken appearance, it was perhaps better to explain to the Council how it came

to be in the form in which it was now. The Bill was introduced a very considerable time ago, for the purpose, principally, of establishing a uniform law throughout India on the subject of these practitioners. There was also another object in the Bill, which was to alter the law respecting the remuneration of pleaders and mukhtárs as between themselves and their clients. There had been a great deal of correspondence on the Bill, as the Council would easily see by casting their eye through the margin of the Committee's Report. There would be seen a list of a number of papers, some very voluminous, which had come to the Committee, and the matter had been a considerable time in their hands. The result of the examination of these papers was that there was so much difference between the different parts of India with respect to the mode of conducting legal business, that it was not desirable to attempt a uniform law for the whole of India. All the Local Governments objected to it, and on an examination of their objections, the Committee thought the objections were sound. Again, with respect to remuneration there was an almost universal objection to the change, from pleaders and mukhtárs who were practising all over the country; they pointed out some practical objections to the alterations that were proposed, and they also entered into a considerable amount of evidence to show that the mischiefs which were supposed to result from the present system had no real existence, or were not nearly so great as was supposed. Well, the present system of remuneration, which left perfect freedom of contract between pleader and client, had been affirmed by this Council in 1865, and had since been affirmed by the Executive Government, who had extended the Act of 1865 to other provinces of India, besides that of Bengal, for which it was passed. And on consideration of what was said on this subject, the Committee thought that there was not sufficient evidence to show them a clear way to alter the substantive principle which had been so recently affirmed by the Council. In fact it was better to let matters go on working as they were, and to leave it to our successors, if need be, to make any alterations. Well, when these two objects were abandoned, it was found that the great body of the Bill had better be abandoned too; for though some slight consolidation of the law might be effected, yet it was so exceedingly small that it was not sufficient to warrant our passing the Bill. The consequence was that the whole Bill would have been dropped but for one local object effected by it, and that was the object which was aimed at by the single section which it was proposed to retain. It affected a class of practitioners in Bengal alone, who were called "Revenue Agents." They were agents qualified to practise in the Revenue Courts; they were admitted on a certain amount of examination and on certificate, and had a

recognized position in those Courts. One considerable department of practice in those Courts used to be what were called 'rent suits,' suits between landlords and tenants, and Revenue Agents conducted the practice in those suits at the time when the Act of 1865 was passed and for some years afterwards. They had thereby acquired considerable knowledge of the matter and had conducted their business, we were told, with satisfaction to their clients and the general benefit of the public. Well, an alteration of the law was made by a Bengal Act with respect to these rent suits, and instead of being instituted in the Revenue Courts, they were turned over to the Civil Courts. Now Revenue Agents had no right to practise in the Civil Courts, and the consequence of the shifting of rent suits from the Revenue Courts to the Civil Courts was this, that the Revenue Agents found themselves deprived of a kind of practice which they had before, and their clients—landlords and tenants—found themselves deprived of the services of men whom they, as we were told, had learned to value, and whose services they still desired to employ. The Government of Bengal, then represented by Sir George Campbell, applied for an alteration of the law to enable the Revenue Agents to practise in the Civil Courts, only in *rent* suits, not further than that, and a clause was put in the original Bill for that purpose. His hon'ble friend Sir Richard Temple took the same view; namely, that the alteration should be made, and the Bill would now just carry out that wish of the Government of Bengal; a wish which seemed exceedingly reasonable, whether we considered the interests of these Revenue Agents or their clients. The Committee had therefore retained that one section of the Bill and proposed to pass it in that form. At the next meeting of the Council, he hoped to move that the Report of the Select Committee be taken into consideration and the Bill passed.

His Honour THE LIEUTENANT-GOVERNOR had only to express, on behalf of the Government of Bengal, his obligations to the hon'ble mover of the Bill, and also to express the satisfaction with which he had listened to his hon'ble friend's explanation of the merits of the case. This Bill would open out to a very important and influential body of law practitioners in Bengal a particular field of employment which they were peculiarly qualified to occupy, both as regards the great landed interest in Bengal and also the interests of the ryots, and HIS HONOUR had no doubt they would discharge their functions to the satisfaction of the public. He said they were qualified, because they were subject to as strict a system of examination in these matters under the Board of Revenue as could be desired. He had no doubt that this Bill, if passed into law, would add, he would not say to their influence, because they possessed that already, but to their status, emoluments and respectability. The Council were aware that it

was very important that a body of practitioners, who possessed so much influence and had a large practice in one particular class of business, should be legally allowed to practise in this other remunerative work, as this would add to their status and general trustworthiness.

CHUTIA NÁGPUR INCUMBERED ESTATES BILL.

His Honour THE LIEUTENANT-GOVERNOR introduced the Bill to relieve from incumbrances certain estates in Chutia Nágpur, and moved that it be referred to a Select Committee with instructions to report in a month. He said that it would be in the recollection of the Council that at the last meeting he stated the objects and reasons for introducing this Bill, and he had only now to add that the draft Bill now on the table had been framed strictly on the model of the Bill passed into law some years ago for Oudh. Since the last meeting, he had learned incidentally that the effect of the Act in Oudh had not been quite so satisfactory in all respects as he had supposed when he addressed the Council. But still he was sanguine that the principle of the Act, and consequently the principle of this Bill, which was framed upon the model of that Act, was really sound and workable. If there had been any defects in the practical working of the Act in Oudh, he supposed they must have arisen from local circumstances. And if the experience of Oudh should be available to us in the Select Committee, he had no doubt that they should be able to make various improvements in detail. But still he was confident that the Act as it stood and this Bill were sound and good in the main; and if there were any improvements which could be made in the details, they could be effected in Committee. He had no doubt that one or two Hon'ble Members on his right, who had special experience in the working of the Act in Oudh, would consent to serve on the Committee, and give the Committee the benefit of their experience. With these remarks, he had now to introduce the Bill and to move that it be referred to a Select Committee with instructions to report in one month.

His Excellency THE PRESIDENT thought that it would be a great advantage, as suggested by His Honour the Lieutenant-Governor, that the deliberations of the Council upon this Bill should be assisted by the appointment of Mr. Inglis to the Select Committee, because, when he acted with so much advantage to the public service as Chief Commissioner of Oudh, he paid great attention to the working of the Oudh Taluqdárs' Act, which in some respects had not been altogether satisfactory, and therefore his presence on the Committee would enable him to make valuable suggestions with respect to this measure.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR then moved that the Bill be published in English in the *Gazette of India* and in the *Calcutta Gazette* in such languages as the Lieutenant-Governor of Bengal shall direct.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to relieve from incumbrances certain estates in Chutia Nágpur ——The Hon'ble Messrs. Hobhouse, Inglis and Hope and the Mover.

The Council then adjourned to Tuesday, the 8th February 1876.

CALCUTTA,
The 25th January 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department.

O. S. G. P.—No. 298 L. D.—28-1-76.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 8th February 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal.

Major-General the Hon'ble Sir H. W. Norman, K.C.B.

The Hon'ble A. Hobhouse, Q.C.

The Hon'ble E. C. Bayley, C.S.I.

The Hon'ble Sir W. Muir, K.C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

The Hon'ble John Inglis, C.S.I.

The Hon'ble Sir Douglas Forsyth, C.B., K.C.S.I.

The Hon'ble T. C. Hope.

His Highness Mahárájá Iswaríparshád Náráyan Singh Bahádur, of Benares.

The Hon'ble D. Cowie.

The Hon'ble Rájá Nárendra Krishna Bahádur.

PLEADERS, MUKHTÁRS AND REVENUE AGENTS' BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Pleaders, Mukhtárs and Revenue Agents in Northern India be taken into consideration. At the last meeting he said a few words in explanation of the dimensions which the Bill had assumed, and gave by no means a full, but a general, explanation of the meaning of the section left. He must now state rather more fully to the Council what was the exact bearing of that section. The law on this subject was at present regulated by Act XX of 1865, which was the Act for determining the status of pleaders, mukhtárs and revenue agents. Some provisions were made by that Act for the examination and admission of pleaders, and it was provided that pleaders, when duly admitted and enrolled, might appear, plead and act in any Revenue Office within the limits of the general jurisdiction of the High Courts in which they were enrolled. Then provisions were made for enrolling, under certain qualifications and certificates,

practitioners called "revenue agents;" and when a person was duly admitted as a revenue agent by the Board of Revenue, he was admitted to practise as a revenue agent in the Revenue Offices within the limits of the territories under that Board. The Council would see that there were two classes of practitioners who, under the Act, might practise in the Revenue Courts,—duly admitted pleaders and duly admitted revenue agents. Now when that Act was passed, a considerable portion of the jurisdiction of the Revenue Courts consisted of an important class of suits between landlords and tenants, usually called rent-suits. The revenue agents therefore practised in those rent-suits and were very largely employed in them, because they consisted of a class who were employed by the zamíndárs to manage their general affairs, and who would possess, independently of their employment in the litigation, a considerable knowledge of their employers' affairs.

Well, the legislature of Bengal in 1869 passed a law for the purpose of transferring rent-suits from the Revenue to the Civil Courts. The consequence was that those practitioners who could only practise in the Revenue Courts were unable any longer to practise in the rent-suits, and the pleaders who could practise both in the Revenue Courts and in the Civil Courts were the only practitioners whose assistance either the zamíndár or the ryot could obtain in the conduct of their rent-suits. It was found that the Act worked hardship both to the practitioner, who was excluded from the practice he was qualified to exercise, and to the suitor, who could not employ the person whom it was most convenient for him to employ. And accordingly the Government of Bengal made an application to the Government of India for an alteration of the law. Mr. Hobhouse had stated erroneously on the last occasion that the application was first made in the time of Sir George Campbell. He saw that it was first suggested at the end of the reign of Sir William Grey, and he would now read to the Council the words of Sir William Grey when making that application. In speaking of revenue agents he said:—

"The status of these men is primarily affected by Act VIII (B. C.) of 1869, which transfers the adjudication of rent-suits from the Revenue to the Civil Courts, where they are debarred from *pleading* with reference to the provisions of section 11, Act XX of 1865 of the Imperial Legislative Council. The words of this section would seem to declare that, though a mukhtár might appear and conduct cases in the Civil Courts, the actual pleading in such suits was beyond his competency in the present state of the law; while revenue agents were by the 25th section restricted entirely as regards their practice to the Revenue Offices. Even when shut out from pleading in the rent-suits to be brought in the Civil Courts, such of the rent-suits as were pending in the Revenue Courts at the time that Act VIII of 1869 came into effect promised to afford work to these men for some time, but even this chance of present employment has been

withdrawn by the operation of Act III (B C) of 1870, in accordance with the provisions of which these suits have for the most part been removed from the Revenue Courts. The case of mukhtárs and revenue agents is therefore one of great hardship The impoverishment, in consequence of the existing state of the law, of the revenue agents of the Backergunge district, who are represented to be an able body of men, has been specially reported by the Collector, and the Board of Revenue have deemed it necessary to recommend that, in the case of all revenue agents who might strike their names off the rolls, a proportionate refund of stamp-duty should be sanctioned on account of the unexpired portion of the current year covered by each cancelled certificate A petition has also been received from certain zamíndárs and taluqdárs in the Backergunge district, representing the hardship of being compelled, under the amendments of the rent law, to have recourse to the more expensive agency of pleaders, instead of revenue agents, in rent-suits. The Lieutenant-Governor is constrained to recognise the force of the objection, and he fears, indeed, that the advantages of the legislation under Act VIII (B C) of 1869 may, to a great extent, be neutralized by the costliness of the agency, which, under present circumstances, litigants are obliged to employ for the conduct of rent-suits.

"Under all those circumstances, seeing that the changes in the law adverted to press heavily not only on the mukhtárs and revenue agents themselves, but upon a large body of the people; that in some districts pleaders are even now few in number; and that the men composing the classes of mukhtárs and revenue agents have been long practising with the approval of the Courts and acceptance to the public in this particular class of suits, the Lieutenant-Governor would be glad to see an alteration in the present law as to the position of mukhtárs and revenue agents"

The Council would perceive that there were two distinct grounds taken in that application; one was the ground of hardship to individual practitioners, and the other was the much broader ground of hardship to the community who wanted to have the assistance of revenue agents in rent cases.

The proposal there contained was submitted to the High Court, and that learned body differed in opinion; and he would state to the Council what were the opinions received. The bulk of the Judges were against the proposal; they were eight in number; they included the two able Native gentlemen who were then Judges of the High Court, Bábu Onoocool Chunder Mookerjee and Bábu Dwarkanath Mitter, and also the whole of the Civilian Judges then on the Bench. Any opinion coming from such a body must bear great weight. The statement of the Judges' opinions was rather long, and several of them had written separate Minutes; therefore he could hardly read all they had said to the Council. But he thought it would be accurate to say that the bulk of them concurred in the following reasons, and that no other material reason was given against the proposal. In the first place, as regarded hardship to the practitioner, they stated that it was only since 1865, the date of the Act

which he had mentioned at the beginning of his speech, that the revenue agents occupied the particular position from which they complained that they were displaced by the legislation of 1869. Therefore the objectors said that the hardship to the revenue agents was not very substantial. Secondly, the objectors said that the proposed alteration of the law would deteriorate the status of the Bar. They stated that the mukhtárs and revenue agents who would be let in to practise under the alteration were an inferior set of men; that the High Court had been making endeavours for a number of years to raise the status of the Bar in the country with regard to practitioners of all kinds; and that this would be a retrograde step, and let in practitioners with lower qualifications. Thirdly, they said that the remedy proposed was insufficient, if the hardship were real, for it was only proposed to let the revenue agents in to practise in the Munsifs' Courts; whereas, to give a complete remedy, they ought to be allowed to practise in all the Courts wherever rent-suits were carried. Fourthly, they said that there was great practical difficulty in dividing rent-suits from other suits, and there would be much contention and litigation as to whether certain suits were rent-suits or other suits.

He was sure the Council would understand him when he said that this question was one on which he could not himself undertake to form any very original opinion, because he was not personally conversant with the matter. He could only undertake to give the opinions of other people instead of his own, and he would try to do that as fairly as he could, and he believed he had fairly given the opinions stated by the learned Judges. The Council would observe that these reasons addressed themselves to two main points—the status of the Bar, and the hardship on individual practitioners; and that, of course, was natural enough. These were the points upon which the learned Judges had the greatest amount of familiarity and to which they naturally addressed themselves; but they did not address themselves to the broader ground, namely, the hardship on the clients.

Three of the Judges dissented from the opinion of their colleagues. These were the then Officiating Chief Justice, Mr. Norman, Mr. Justice Phear, and Mr. Justice Paul. They took the same grounds that were taken by the Lieutenant-Governor, and they dissented from their learned brethren in thinking either that the status of the Bar would be deteriorated, or that there would be any difficulty in separating rent-suits from other suits. MR. HOBHOUSE would read to the Council a few words from the opinion of Mr Paul, because he was a gentleman who for a great many years had a large practice at the Indian Bar, and had thereby been brought into contact with practitioners of

all kinds, and had seen in cases which came up to him how these practitioners did their work. He said :—

"I consider the mukhtár or revenue agency a cheap agency, and well adapted to the requirements of poor suitors.

"Speaking from my own knowledge, I should say that mukhtárs, who have hitherto practised as revenue agents, are ordinarily fully able to discharge the duties required of them. I do not think it can be said that, as a body, these revenue agents are incompetent to discharge their ordinary duties, and I therefore consider the total exclusion of these people would be an act of manifest and intolerable injustice.

* * * *

"I generally concur in the views put forward by the Chief Justice, and in that concurrence, and in the few observations I have made, I have entirely omitted from my mind the consideration of hardship. My opinion has been based on the general capacity of mukhtárs to discharge their ordinary duties, and on the sense of justice which ought to guide all legislation."

Mr. Paul, therefore, quite independently of the consideration of hardship to the individual practitioner, speaking in the interests of the suitors and the community, and speaking from his own knowledge how revenue agents did their business, was of opinion that they ought to be allowed to practise in rent-suits. MR. HOBHOUSE was sorry to say that this point was very much overlaid and hidden by the discussions about other matters which arose on the Bill. As he explained to the Council on the last occasion, there were other matters in the Bill of very great importance to the general interests of both client and lawyer all over India, and that an extremely voluminous correspondence had taken place regarding them; and he was afraid that the interests of Bengal suitors rather went to the wall in the controversy which was raised, and there had been a good deal of delay which he very much regretted. Owing to that delay, it was thought necessary, when the matter came on for discussion, to apply again to the Government of Bengal to know whether they retained the view which was put forward by Sir William Grey; and the Government of Bengal not only retained that view, but held that it would be proper in the interests of the community to admit all duly authorized revenue agents to conduct their clients' business in rent-suits. The clause in question therefore was somewhat altered, somewhat enlarged, and was put in the shape in which it now appeared before the Council. As it was originally drawn, it applied only to those persons who should be revenue agents whenever the Act happened to pass. It now provided that persons duly admitted by the Board as revenue agents should be admitted to plead in rent-suits. That was the form in which the Bill now was. He had

endeavoured to give to the Council the conflicting views which had been put forth on the subject, and they could form their own opinion whether the report should be accepted.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA BAHÁDUR said that the provisions of the Bill were, he believed, generally approved of by the public; and the landed gentry of his country would, he thought, find it to their advantage if the mukhtárs had the power to plead their rent-suits in the Civil Courts. There was no necessity for the Bill to be published again in the Gazette for the information of the public, and he would suggest that it be passed at once into law.

His Honour THE LIEUTENANT-GOVERNOR thought that perhaps this was a measure on which he ought to say a few words at this present stage. He entirely concurred in the lucid and impartial statement made by the hon'ble member in charge of the Bill, and also in the remarks which had fallen from his hon'ble friend Rájá Nárendra Krishna, who, as the Council knew, was a Native gentleman of the greatest knowledge and experience in this subject. In fact, the hon'ble member's knowledge and experience in these matters were such as might be considered worthy of his high character and status in Native society. And the Council had just heard, though briefly stated, nevertheless strongly stated, the opinion on his part in favour of the Bill.

As regards the general merits of the question, it might be looked upon in two lights, namely, as regards the interests of the Bar and the interests of the clients. Now as regards the interests of the Bar, he had heard, as everybody had heard, with the greatest respect and attention, the observations which fell from the learned Judges of the High Court. But with all deference to them and the great tribunal they represented, it must be remembered that this was really a question between two sections of the Native Bar. Both of those sections were constituted by one and the same Act; nevertheless they represented two branches of the same stock. There was a Native Bar on the revenue side and a Native Bar on the judicial side. Well obviously, if the Board of Revenue were to speak up on behalf of the Native Bar on the revenue side, it was not a matter to be wondered at. So, by parity of reasoning, if the learned Judges spoke up for the Native Bar on the judicial side, neither was that a matter to be wondered at. It was for the Government and this Council to judge between these conflicting claims.

As regards the merits of the case, it must be considered what was the class of suits to which the present question referred. Well, it referred to suits for

rent, which represented the most important class of suits relating to the landed interests of Bengal. Now he put it to this Council whether it was not just that the revenue side of the Native Bar should be admitted to practise in rent-suits. Was it fair to the two sections of the Bar that a monopoly should be secured either by one or by the other? Now, in the present state of the law, it was secured to the judicial section of the Bar. This Bill did not seek to exclude that section, but it sought to admit both sections of the Bar—to give a fair and open field for the exercise of their respective talents. It was well known that no monopoly was sought for on behalf of the revenue section of the Bar, but a fair division, equal terms, were asked for on their behalf.

He might be asked, whether the revenue section of the Bar was likely to be qualified. In point of fact they were likely to be more qualified, perhaps, from their special experience than the judicial section of the Bar. As regards their inferior status and qualifications, which some of the learned Judges referred to, he was sorry that this should be the opinion of such competent authorities. But he would ask the Council to consider the sections of the Act under which these revenue agents were enrolled. The whole Native Bar, both revenue and judicial, was constituted by one Act of this Council (Act XX of 1865). It laid down very precisely the method by which the judicial section of the Bar should be constituted. Having done that, it proceeded to lay down in precisely a similar manner, *mutatis mutandis*, the manner in which the revenue section of the Bar was to be constituted. At the head of the judicial section of the Bar there was the High Court, which might be considered very proper. At the head of the revenue section was the Board of Revenue, which was obviously a proper authority; an authority not, perhaps, so high as the High Court, but which was still at the head of fiscal matters, and an authority which was almost equal in importance to any authority whatever as regards the vastness of their responsibilities and as regards the numerous and weighty public interests entrusted to them. Might he for one moment ask the attention of the Council to the very strict provisions of Act XX of 1865 regarding these agents? Before section 19, there was a heading "of agents practising in Revenue Offices." The section set forth that no person was to act in Revenue Offices unless qualified as therein provided; section 20 said that the names of revenue agents were to be enrolled; section 21 prescribed the form of certificate to which a stamp was to be affixed; section 23 provided that the Revenue Board was to ascertain the qualifications of revenue agents; section 24 prescribed that the Local Government was to appoint examiners; section 25 related to the enrolment of revenue agents in the Offices in which they should usually practise; section 27

provided that the Board should suspend or dismiss revenue agents practising before it who were found guilty of unprofessional conduct; section 28 prescribed the procedure to be adopted when a pleader was charged with unprofessional conduct before the Board; section 30 gave power to the Board to call for the record of a case; then section 33 provided that a dismissed agent was to surrender his certificate; section 34 laid down the penalty for an unqualified person practising as an agent; section 37 laid down that the Board was to fix the fees to be demanded by revenue agents in civil and revenue proceedings. So that His Honour could not but think that these provisions were, *mutato nomine,* just as exactly, as strictly and as carefully arranged and drawn from beginning to end as on the judicial side, and you had exactly the same security for the qualification and standard of the revenue side of the Native Bar as you had on the judicial side; and it was not open to any authority to question the qualifications of these agents.

Well, then, as regards the interests of clients, it was but natural that landlords, one great class that had interest in land, should prefer to employ in their rent-suits the same gentlemen that they employed in all other classes of business before the revenue authorities; and it was but natural that the cultivators, the humbler classes, should desire to employ revenue agents whose services could be obtained at an amount not much cheaper than the services of the judicial section of the Bar, but still somewhat cheaper than the members of the judicial Bar. So that there was really an important interest to be served on behalf both of the landowning and the cultivating classes of the country in this matter. The improvements of the Bar (he used the word in its broadest sense), that was to say, the whole Native Bar, whether on the revenue or on the judicial side, was a matter of great importance in Bengal; and cases on the revenue side in the Revenue Offices were becoming just as intricate and important as on the judicial side. He did not know how far the members of this Council followed the course of local politics in Bengal, but it was probably known, more or less, to all the members that there were great revenue laws pending before the local legislature which would in some shape or other be passed into law sooner or later, and the slightest inspection of their character and extent would show the important classes of business which were likely to come up in increasing quantities before the Revenue Courts. He would instance the amendment of the law of partition; the law regarding the management of joint undivided estates; the law regarding the registration of possessory titles in land; and probably—he spoke, perhaps, without absolute authority—the law regarding agrarian disturbances was more or less likely to be passed in some shape or other. These were four important Acts, and doubtless owing to the constant

attention given to all matters relating to land in Bengal, there would be some more Acts of a similar nature passed. Now, all these Acts threw a large class of quasi-judicial business on the Revenue Courts, and therefore the revenue Bar became necessarily an important part of the Native Bar; and it was but fair that they should have an equal share with the other section of the Native Bar in these rent-suits.

This matter had been for some time past under the consideration of the Government of Bengal, and as his hon'ble friend opposite (Rájá Nárendra Krishna) knew, and as was known to many other gentlemen and bodies of gentlemen connected with the land, it was a matter on which considerable interest was felt; and without in any way arrogating a position for them superior to their judicial brethren, HIS HONOUR did say that in this, which was an essentially revenue field—relating as it did to rent—revenue agents ought to have a fair and equal share and be admitted upon equal terms; and for such admission the Act in force prescribed a perfect and certain procedure. He was confident, if the Council were pleased to admit revenue agents on the terms on which the Local Government desired, that these men would prove themselves by their conduct and qualifications worthy of the concession.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed. He said that the Council had heard what conflicting opinions there were on this subject. If any of his hon'ble colleagues thought it was desirable that a republication should take place, or that more time should be allowed for consideration of the question, he was quite willing, with the consent of His Excellency the President, to vary his motion accordingly. Otherwise, he begged to move in the terms of the notice.

The Motion was put and agreed to.

NATIVE COINAGE BILL.

The Hon'ble SIR W. MUIR moved for leave to introduce a Bill to enable the Government of India to declare certain coins of Native States to be a legal tender in British India. He said—

"My Lord, it is well known to the Council that various currencies are in use throughout different parts of India, and that many and great evils result therefrom. The difference of coinages seriously embarrasses trade and perplexes dealers in the markets where they are current. And both to individuals and

the State inconvenience and often heavy loss result from the same cause in the realization of rent and revenue. Only those who have been in parts of the country where different coins are current can know the extent of injury and hardship to which the people are subjected by demands being made on them in a different coinage from that which locally prevails. The pressure of each instalment of rent or revenue raises the premium on the coin which is in demand, often to the great detriment of the people. And the same thing occurs in all the dealings of the market. Uncertainty and loss prevail; and the only trade which thrives is that of the shroff or money-changer. The evil demands a remedy if one be possible.

"But it is evident that the evil must last as long as Native mints continue to issue coin each according to its own standard, differing from our standard and from that of each other in weight and value. And Native States possessing the privilege are naturally unwilling to resign it; because this privilege is highly valued by them as a mark and appanage of sovereignty.

"Now the proposed measure is designed to remove these objections, and to smooth the way to the adoption of a common currency throughout all districts both Native and British. It is provided in the measure which I hope to introduce, that whenever any State has signified its willingness, we shall undertake to mint for it a coinage in every respect equal as to weight and value with our own, so that it may be admitted as a standard and legal tender in British India as well as in such Native State. The device and legend on the coin will be such as unmistakably to denote that it is the coin of the Native State in behalf of which it is minted. And thus the dignity and sovereign rights of the State will be respected and maintained, while the currency will be uniform in weight and value with British money.

"To render the adoption of such a course possible certain preliminary securities are required.

"In the first place, it is evident that the arrangement to have any fixity and value, and to secure confidence in the market, must not be temporary, but must continue at any rate for some considerable period of years. For such period, at the least, the Native State must guarantee that it will close its mint and issue only the new money contemplated in this measure.

"Next, it must be stipulated that, if at the close of that term, or at any future period, the State should re-open its mint, it will never, in all time to come, coin any pieces of money at all resembling in appearance the money

issued under this Bill. For it is evident that otherwise uncertainty might be thrown upon the legalized coin from the fact of another similar but unguaranteed coinage circulating side by side with the standard money in the British market, before it might be possible to demonetize and withdraw such standard money.

"These are the chief precautions for assuring the safety of the measure. There are other minor matters for which it is proposed to provide. For example, the device on both sides of the coin must be different from that on coins now made and issued by any Native State, and further such design must be first approved by the Government of India. Moreover, on all such coins the value in our money must be inscribed in the English language, a provision required to secure its ready recognition in British markets.

"The measure thus guarded will, it is believed, be perfectly safe, and it will be effective in so far as Native States will agree to co-operate with us in adopting it. But the extent and efficiency of its action will of course be entirely dependent upon their willingness to co-operate.

"It will naturally be asked whether we have any reason to anticipate that they will co-operate. We trust that they gradually will do so. And we have already received adhesions to the measure. The small State of Alwár has the honour of being the first which signified its readiness to fall in with such a scheme. And now Holkar has entered into negociations with the Government of India for the same purpose. His Highness has in this matter shown his usual wisdom and perception of economic benefits, and his ready and loyal appreciation of the common advantages which will accrue from the measure both to his own dominions and ours; and has accordingly signified his willingness to adopt the new coinage in supersession of his own.

"Thus there are two States with which we can commence at once; and when the benefits of a uniform and standard coinage come to be seen, as it may be confidently hoped they will in these instances be seen, we may reasonably expect that other States will follow their example. The progress may be slow; we trust that it will not; but even if it be gradual, the object to be secured is so large and so important that we can afford to wait and to keep it patiently in view. Meanwhile, every Native State which gives in its adhesion to the project will close one of the springs from which the varied currencies flow, and in so far diminish the mischief. And eventually we may cherish the hope that the sources of the evil will all be removed, and that a uniform currency will prevail over every part of the Peninsula and Continent of India."

The Motion was put and agreed to.

SINDH INCUMBERED ESTATES' BILL.

The Hon'ble MR. HOPE asked leave to postpone the motion for leave to introduce a Bill to relieve from incumbrances certain estates in Sindh.

Leave was granted.

The Council then adjourned to Tuesday, the 15th February 1876.

CALCUTTA,
The 8th February 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department.

Office Supdt Govt Printing —No 387 L D —11-2 76—230

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 15th February 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.
Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.
His Highness the Mahárájá of Vizianagram, K.C.S.I.
The Hon'ble John Inglis, C. S. I.
The Hon'ble Sir Douglas Forsyth, K. C. S. I.
The Hon'ble T. C. Hope.
His Highness Mahárájá Iswariparshad Naráyan Singh Bahádur of Benares.
The Hon'ble D. Cowie.
The Hon'ble Rájá Narendra Krishna Bahádur.

CRIMINAL TRIBES (LOWER PROVINCES) ACT EXTENSION BILL.

His Honour THE LIEUTENANT-GOVERNOR moved for leave to introduce a Bill to extend the Criminal Tribes Act to the Lower Provinces of Bengal. The object of the Bill which he hoped to have leave to introduce was briefly this. There were certain tribes in the Provinces under the Government of Bengal who lived by thieving, and whose social condition was in several respects a disgrace—he could not use a milder expression—to a civilized community and indirectly a discredit on the Government that tolerated it, if indeed it were tolerated. Well, as the Council knew, it was much more easy to describe an evil than to provide remedies for it, and he was not sure even that a perfect

remedy could be provided. At all events, it seemed incumbent upon them to do what they could for the reclamation of these criminal people and trust to Providence for the result. The two particular tribes they had under notice were the Mugheya Domes of Bihár and the Bedyas of Eastern and Central Bengal. The Mugheya Domes were not only a nuisance to the well-disposed inhabitants, but were in several respects a dangerous class. The Bedyas were not so dangerous, but were of a thieving, predatory and wandering disposition, as he dared say some of his hon'ble colleagues on the left were well aware.

Sometime ago a Bill was passed by this legislature for registering and bringing under discipline some criminal tribes in the North-Western Provinces, and the Government of Bengal now desired to introduce a similar measure into those provinces; and inasmuch as the Bill for the North-Western Provinces was very carefully prepared and had been worked doubtless with some degree of success in that part of the country, he (THE LIEUTENANT-GOVERNOR) thought the best and simplest plan was to provide for its extension to the provinces under the Government of Bengal. One advantage of this course was brevity: a Bill with one or at most two sections would do all that was necessary, and give the Lieutenant-Governor of Bengal power to do all that it was desirable to do with regard to the predatory tribes whom he had just mentioned.

The Motion was put and agreed to.

NATIVE COINAGE BILL.

The Hon'ble SIR W. MUIR introduced the Bill to enable the Government of India to declare certain coins of Native States to be a legal tender in British India, and moved that it be referred to a Select Committee with instructions to report in a month. He said that he had entered last week so fully into the object of the measure and the provisions by means of which it was proposed to give effect to it, that little remained for him but to introduce the Bill. He would merely allude to the main outlines.

A condition antecedent to any action under this Bill was the expressed desire of a Native State to adopt its provisions, and in furtherance of the same to undertake certain obligations. These obligations would be found detailed in the fifth and following clauses of the fourth section. The first and chief was, that the Native State undertook to close its mint for a period of not less than thirty years, and to use the new money to be coined under this Bill as its legal currency. Then, if at the close of such period the mint were re-opened, no coin resembling the new coin was ever to be minted. We might hope that, after so long an expe-

rience of the benefits of the new system, it would become permanent; but, under any circumstances, the period allowed for the experiment must be a long one; and it was thought that any term less than thirty years would not be suitable for the purpose.

When the Native State had undertaken these obligations, then section two provided for the issue of a Notification, whereupon the new coins would become a legal tender in British India.

The earlier clauses of section four contained provisions regarding the coins to which the Bill would have reference. They are to be identical in weight and fineness with coins of British India. The devices on the obverse and reverse are to differ from that of any Native coins, and to be approved by the Governor General in Council; and the value of each coin is to be inscribed on it in the English language.

His Highness THE MAHÁRÁJÁ OF BENARES said that as inconvenience and loss were constantly being felt in consequence of the number and variety of coins, some good plan should be devised to remove this inconvenience.

It was mentioned in the statement of reasons for introducing this Bill, that it would be naturally unpleasant to the Chiefs of India to give up their privilege of coining, and provision had accordingly been made in the Bill to remove this feeling. In his opinion also this important matter was deserving of greater consideration, and he hoped that the Select Committee would give their best attention to it. It would perhaps be better that, instead of Government going to the trouble of striking coins in its own mint, it should hold Native States responsible for the correctness of their standard of value and weight; or another plan would be, that the weight and value of such coins, as compared with British rupees, should be tested and published. They would then circulate easily and without loss; and the object of the Bill would thus be preserved, and no other ideas would arise in Native States.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM said that the establishment of a uniform coinage throughout India would give great facilities to trade, and would also remove serious inconvenience and loss, both to the public and the State. The provisions prescribed in the Bill would, he hoped, remove the objections made by several Native States to resign the privilege of issuing coin themselves. At the same time he hoped that the Select Committee, in considering the Bill, would bear in mind that the power of coining money had been enjoyed by Native States from a remote period.

His Excellency THE PRESIDENT said:—"I have no doubt that the Select Committee will take into consideration the observations which their Highnesses the Mahárájá of Benares and the Mahárájá of Vizianagram have made upon this Bill. It is, however, well to state distinctly that the provisions of the Bill will in no way interfere with the discretion of Native Princes. The introduction of a uniform currency would be of considerable advantage to the people of the Native States of India, because, as has been observed by His Highness the Mahárájá of Vizianagram, the inconvenience of having coins differing from those of British India circulating in Native States which are gradually being brought into closer business relations with us, by the extension of railroads, is very great. The Bill has been carefully framed, so that there will be no interference whatever with the discretion of the Ruler of any Native State who may desire to take advantage of its provisions.

"The arrangement contemplated by the Bill is entirely of a voluntary character, and only such conditions have been imposed as appeared to the Government to be essential in order to secure a uniformity of the standard currency throughout India.

"I am happy to say that His Highness the Mahárájá of Indore, in personal communication with myself, has expressed his desire to take advantage of this Bill in order to secure a uniform currency between His Highness' territories and those of the British Government; and I trust that other Rulers of Native States may see the advantage of adopting a similar course.

"At the same time I wish it to be distinctly understood that the Government of India, in introducing this Bill, desires in no way to exercise pressure, either directly or indirectly, upon Native States, and that it is entirely left to them to say whether they will, or will not, take advantage of the Bill."

The Motion was put and agreed to.

The Hon'ble SIR W. MUIR then moved that the Bill be published in English in the *Gazette of India* and in the respective Gazettes of the Local Governments in English and such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

PRESIDENCY MAGISTRATES' BILL.

The Hon'ble MR. HOPE presented the further Report of the Select Committee on the Bill to extend certain parts of the Code of Criminal Procedure to

the Courts of the Police Magistrates in the Presidency towns He said that although he did not propose to move the Council to take this Report into consideration on the present occasion, yet he thought it might be convenient, considering that the measure had already been some four years under consideration, if he were to state, in as few words as possible, its origin and present scope Act XXV of 1861 did not apply to the High Courts in their action in the Presidency towns or to Police Magistrates in such towns When the amendment of that Act, which became law as Act X of 1872, was under consideration, although the principle was fully admitted that the system of procedure for the Mofussil ought, *mutatis mutandis*, to be extended to the Presidency towns, yet it was not thought desirable to incorporate such an extension with the revised Code itself, because that course might have given rise to considerable discussion and have postponed for an indefinite time the improvements in that Code which at the time were urgently required for the Mofussil At the same time, however, in April 1872, Mr Stephen obtained permission to introduce a separate Bill to carry out the object in view, and in doing so said of the procedure at that time obtaining, and up to the present time obtaining, in the Presidency towns as regards the Police Courts, that "it was quite impossible to say where it began or what it was," and that it caused "great waste of public time and money about matters of absolutely no importance at all"

In accordance with the permission then granted, the Hon'ble Mr Hobhouse in July 1873 introduced a Bill which was referred to a Select Committee In April 1874, he presented the Report of the Select Committee, the principal recommendation of which was that the Bill then before the Council should be divided into two One portion relating to the High Courts alone was accordingly retained as the main Bill, which became law as Act X of 1875 the other portion was taken out and introduced as a distinct Bill, having reference to Police Magistrates alone, and that was the matter now under consideration

The principle of the Bill was that it applied to the Presidency towns a variety of sections of the Code of Criminal Procedure It, further, allowed the Magistrates of Police to try all cases summarily, and it made no distinction between the powers of Native and European Magistrates over Europeans, because it was considered, as regards both these matters, that the check of the Press and the Bar would prevent irregularities such as might arise in the Mofussil. At the same time the Bill gave no control to the Magistrates over the Police, because it was a large and important body and required a separate head, the Commissioner of Police The Committee reserved for future consideration a suggestion made by the High Court at Calcutta that the powers

of Police Magistrates should be extended in order to save the jurors and the Court from the necessity of trying a variety of trivial cases.

In March 1875, the Committee submitted a Report on this Bill, and, as the result of their communications with the High Court and the Local Governments, they proposed to give to Police Magistrates the powers of Magistrates of the first class in the Mofussil, subject to an appeal to the High Court from the sentences of such Magistrates which exceeded one year's imprisonment or Rs. 500 fine. As to the form of the Bill, it then consisted of a few sections and a large schedule, in which the various sections of the Code of Criminal Procedure to be applied were quoted by their numbers.

Since the presentation of that Report, the Committee had further considered the matter, and in deference to representations received from various quarters regarding the great inconvenience of a Bill which merely quoted in a schedule the sections of the Code of Criminal Procedure which were applicable to the Courts of Police Magistrates, they had come to the conclusion that it would be more convenient to the Magistrates themselves, to the Bar, and to the public, if they were to re-enact the whole of those sections *in extenso*. This course produced one great advantage, that it brought to light a variety of small anomalies, omissions and superfluities which the schedule contained. At this stage the Committee had to acknowledge the great assistance they had received from some elaborate Minutes by Major Weldon, the Senior Magistrate of Police at Madras, and also from the attendance in Committee and valuable suggestions of Mr. Dickens, one of the Police Magistrates of Calcutta.

The Bill differed from the previous one only in a few points. It was proposed to alter the designation of "Police Magistrates" to that of "Presidency Magistrates." Theoretically, if there was one thing that Magistrates ought not to be, it was policemen, and practically they had no control over the police; further, the cases tried by them were not merely what were called, in common parlance, police cases, but cases of all degrees of magnitude, including those referred to the High Courts.

Further, the Committee proposed to abolish the Court of Petty Sessions at Bombay, which had fallen almost entirely into disuse. The powers conferred on it by Bombay Act IV of 1866 had never been availed of; and in 1874 the only work done by it was the hearing of twelve opium cases and thirteen municipal appeals. Under these circumstances, and as no such Court existed at Calcutta or Madras, the Committee had provided for its abolition, reserving the hearing of municipal appeals to the Senior Magistrate, who was "Revenue Judge" for all land matters at the Bombay Presidency.

Another change was a very material improvement in the mode of record, with the view of affording facilities to the High Courts in dealing with all cases which came up before them on appeal or by way of *certiorari*. And the Committee thought that, with these additional provisions and with the check always supplied by the Press, the Bar, and the public, there was no danger of the enlarged powers proposed to be entrusted to Presidency Magistrates being in any way misapplied.

The chapter on local nuisances the Committee proposed to omit, because it was found that the whole of these matters were already provided for by the local Municipal Acts, and the introduction of that chapter might only give rise to questions of conflicting jurisdiction.

The Committee trusted the Bill would be found to be a complete document and useful to all concerned, and that it would remove what the late Lieutenant-Governor, Sir George Campbell, had called "that floating undefined English law which rendered the procedure of the Presidency Police Courts altogether uncertain, altogether obscure, and altogether beyond the powers of the public to comprehend."

MR. HOPE had said that he did not propose to make any motion for the consideration of the further Report on this Bill. He would therefore only move that the Bill be republished. It was proposed to wait a short period, about a month, to receive any suggestions that might occur to those acquainted with the subject, and then to take the Bill into consideration with a view to its being passed at an early date.

The Motion was put and agreed to.

CHUTIA NÁGPUR INCUMBERED ESTATES BILL.

His Honour THE LIEUTENANT-GOVERNOR presented the Report of the Select Committee on the Bill to relieve from incumbrances certain estates in Chutia Nágpur.

The following Select Committee was named :—

On the Bill to enable the Government of India to declare certain coins of Native States to be a legal tender in British India—The Hon'ble Messrs. Hobhouse and Bayley, His Highness the Mahárájá of Vizianagram, the Hon'ble Mr. Bullen Smith, His Highness the Mahárájá of Benares and the Mover.

The Council then adjourned to Tuesday, the 22nd February 1876.

CALCUTTA,
The 15*th February* 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department.

Govt. Central Press.—No 279 L. D.—22-2-76—250

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 22nd February 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal.

Major-General the Hon'ble Sir H. W. Norman, K.C.B.

The Hon'ble A. Hobhouse, Q.C.

The Hon'ble E. C. Bayley, C.S.I.

The Hon'ble Sir W. Muir, K.C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

His Highness the Mahárájá of Vizianagram, K.C.S.I.

The Hon'ble John Inglis, C.S.I.

The Hon'ble T. C. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rájá Nárendra Krishna Bahádur.

CHUTIA NÁGPUR INCUMBERED ESTATES BILL.

His Honour THE LIEUTENANT-GOVERNOR moved that the Report of the Select Committee on the Bill to relieve from incumbrances certain estates in Chutia Nágpur be taken into consideration. As the Council were aware, the Bill had been framed very carefully on the model of the Act which had been previously passed for Oudh. There were, perhaps, one or two points of detail to which he should draw the attention of the Council. The first question before the Committee was what kind of property should be liable to the conditions of this Act. After some consideration and discussion, they decided to adopt in the title of the Bill the words "immoveable property," as being the most complete expression which could be adopted to include all the various estates, tenures and sub-proprietary rights which might exist in the Province of Chutia Nágpur. It was thought better to adopt one comprehensive phrase than to resort to various local phrases which might or might not fit into precise legislative drafting. It would be observed that the Committee had provided that

so long as an estate continued to be managed, the landholder and his heir should be incapable of entering into any contract which might involve them or either of them in pecuniary liability. They had also provided in regard to improvident leases, that the manager should have power either to set aside a lease or to cause the lessee to pay a proper consideration therefor. With reference to this provision which had been made by the Committee, he would draw the attention of the Council to section 3 of the Bill, which might be considered, perhaps, as one of its most important sections. It would be observed that the effects of an order bringing an estate under management were to be, *first*, the barring of any suits which might have been brought in reference to the estate, the freedom of the owner from personal arrest, and that his immoveable property should not be liable to attachment for prior debts. There was to be a cessation of all power of arrest, and immoveable property was also to be free from attachment, and the section ended with this important clause, that the holders of the property should be precluded from entering into any contracts involving them in any pecuniary liability. The Committee had carefully considered also whether when an estate, that was to say, immoveable property, was brought under management, at the same time any moveable property which the landholder might possess should also be brought under management. But on consideration they decided not to attempt to make any provision of that sort, but to restrict the main provisions of the Bill to immoveable property, that being the sort of property which carried with it those political consequences with regard to which this Bill was intended to deal. They had also considered, on some representations made to them, whether an appeal should be allowed to the Board of Revenue at Calcutta. But they thought that as two appeals were already provided in the Bill, one to the Deputy Commissioner of the district and the other to the Commissioner of the province, it was not desirable to allow a third appeal. They considered that the Commissioner of the province who was the head of the executive, and the Political Superintendent over all these Native Chiefs, should be the final appellate authority.

His Honour thought those were the principal points in the Bill to which the attention of the Council should be directed. He might add one other point perhaps. It was this, that the Committee framed the provisions of the Bill so that there should be no encouragement to the local authorities to bring under their management estates which were hopelessly insolvent. Estates in that condition could not possibly be extricated without either injustice to the creditors or expense to the State, and he need hardly add that neither of those conditions would be accepted. The provisions of the Bill had been so framed that the Act would not work satisfactorily unless the obligations of the

estate were such that there was some reasonable hope of discharging them. Those were the estates which we wished to save and bring under management. If there were estates which were hopelessly insolvent, and the creditors of which were willing to submit their claims to the arbitration of the district officers and the Managers under this Bill, to bring them as it were to a sort of Insolvent Court, no doubt they could do so, and for such cases the provisions of the Act would also be very suitable. But except with the consent of the creditors, it was not desirable that hopelessly insolvent estates should be brought under management, and the provisions of the Act had been framed to that effect.

He thought he had now mentioned all the important points in the Bill. There were also some verbal amendments or slight alterations with regard to which he need not trouble the Council.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA said that this Bill was framed by Government with the best intention of preventing the estates of the landed gentry at Chutia Nágpur from falling into the hands of usurers. It would appear that the landholders of that province did not lead provident lives, or had not the tact of properly managing their affairs. Not possessing a knowledge of the world, which taught men to live within their means or incomes, hence these landholders incurred large debts, and generally mortgaged their estates to such usurers who brought suits against them in the Civil Courts for the recovery of their loans. When these money-lenders obtained decrees they enforced them, and either purchased the estates of their debtors or foreclosed their mortgages, and thus became owners of such lands. In order to prevent such lands coming into the hands of the usurers, the Government would appoint Managers for the management of the proprietors' estates, and when their debts were liquidated, their estates would be restored to them in due time. We could not sufficiently admire the principle upon which this measure was based, and the landed gentry of that part of the country, where the provisions of this Bill would apply, ought to be grateful to the present wise and experienced Lieutenant-Governor of these provinces for introducing this Bill; but RÁJÁ NÁRENDRA KRISHNA would also remark that the money-lenders of that province might apprehend that, under the authority vested in the Managers, they might not care so much to pay off the just debts incurred by the landholders as to see them white-washed completely, whether or not the creditors got the actual sums which they had advanced. He hoped the worthy Lieutenant-Governor would prepare rules for the guidance of these officers which would justify the hopes

of the creditors of receiving back their monies with interest at some reasonable rate. This measure clearly showed how very considerately His Honour wished to deal with respectable people fallen into involved circumstances. In conclusion, he begged to recommend that in special cases the final appeal for the settlement of a debt should rest with the Board of Revenue, when the aggrieved party might adduce reasonable grounds for the interference of the Board.

The Hon'ble Mr. Hope said the Council were no doubt aware that they had had in force in Bombay for some years two Acts of a similar nature to the one which was now under the consideration of the Council. As he happened to hold the post of Collector of Ahmadábád at the time the first of these, Act VI of 1862, the object of which was to relieve the Ahmadábád Taluqdárs from debt, came into force, and as the Broach Thákurs' Relief Act was passed in consequence of representations which he made when Collector of that district, he thought that he ought not to allow the present opportunity to pass without placing before the Council a few of the results of the working of those two Acts. Act VI of 1862 came into force at the close of that year, and it had taken effect in 469 estates. The amount of claims adjusted by the manager had been 1,634, and the amount claimed by the creditors was 24 lákhs. But as the amount found upon a careful investigation to be justly and reasonably due was only 13¼ lákhs, the balance might be taken as a sort of measure of the extortion to which these unfortunate taluqdárs had been subject. Out of this 13¼ lákhs about 12 lákhs had been paid off up to the present time, and only 1¼ lákh still remained unpaid; and although the currency of the Act had been only thirteen and a quarter years, yet no less than 377 out of the 469 estates had already been released from attachment. As regards the Broach Thákurs on the other hand, their number was small; there were only five. The number of claims was 445, the sum claimed was 5½ lákhs, and the amount awarded was Rs. 3,15,000. As the Act had only been four years in operation, none of the estates had yet been released, but the amount paid off out of the Rs. 3,15,000 was Rs. 1,20,000. But we might hope that all these estates would be released in a reasonable time—at any rate in considerably less than twenty years, the period contemplated at the passing of the Act. Now these Taluqdárs and Thákurs were all of them Rájputs of the most ignorant description, and the country in which they lived had passed but recently under British rule. The technicalities of our laws pressed most heavily upon them. Money-lenders were not slow to take advantage of the law and the ignorance of those with whom they dealt, and the result was that when these Acts were brought in the condition of these Taluqdárs and Thákurs was pecuniarily hope-

less, and politically very prejudicial to good order. The Acts had put them upon their legs again, and had indirectly done more than that, because one of the results of the Acts was the appointment of a Manager and the establishment of a taluqdárí school where the sons and young relatives of these Thákurs had been gathered together in a sort of college and received a proper education, so that we might hope they would not fall into the mistakes of their fathers. How far the whole measure would prove beneficial to their successors, or how far a landed aristocracy could be preserved by legislation, were points which time alone could show. But he hoped the Council would agree with him in thinking that the results which had been happily obtained were sufficiently satisfactory to warrant the extension of a like measure to other parts of India, which might be similarly situated.

The Hon'ble Mr. Hobhouse said the only observation he had to make was in respect to the suggestion that there should be a further appeal than was given by the Bill. He was not surprised that persons who were accustomed to see every thing disposed of according to the ordinary course of law should desire that the best assistance that could be had on such occasions should be called in to decide the rights of these creditors. At the same time this Act was one of a rare class, a very special kind of Insolvency Act, passed to meet a particular state of things, and it was necessary for the proper working of it with due economy and due rapidity that the Manager who took the estate in hand should not be exposed to all the litigation in all the Courts to which the ordinary affairs of solvent people were open. Therefore in the other Acts which had been passed on similar subjects and in this Act, it was proposed to keep the decision in the hands of the district officers. There were no less than two appeals given from the decision of the Manager, and if there were a third it must be, as his friend Sir Richard Temple had intimated to the Board of Revenue, who sat in Calcutta, and who, no doubt, had considerable advantages by sitting in Calcutta, from the circumstance that they could be attended by Counsel. At the same time an appeal from a remote district of the kind to Calcutta was attended with very considerable expense, and the various creditors of the estate would probably find the assets to which they might resort for payment considerably diminished by the increase of litigation. It seemed to him better that the local officers should decide on these points. He did not understand that it was proposed to have an appeal to the District Judge or to the High Court, for if so, it would let in all the ordinary course of law, even involving an appeal to the Privy Council. It was necessary in these cases to have a somewhat summary, somewhat arbitrary, procedure; otherwise we should not see the end of the business. His friend Mr. Hope had just given the Council a most instructive account of

the operations under similar Acts. He did not understand from him that there had been any discontent in the working of the previous Acts; but on the contrary, that persons who had claims against these estates were being paid in a more regular and punctual way than if they had to resort to the ordinary process of law without the intervention of such machinery as this. It seemed to him that such machinery, although it might be different from the ordinary course of the law, would be to the benefit of the persons concerned, and that we better not hamper it by giving a third appeal to a distant place such as Calcutta.

His Excellency THE PRESIDENT observed that in clause 17 it was provided that the manager should act in conformity with rules passed under the proposed Act, and by clause 19 the Commissioner was empowered from time to time to make rules consistent with the Act in all matters connected with its enforcement. He should like to know what was the nature of the rules to be laid down for the purpose of determining debts.

The Hon'ble MR. INGLIS said that the rules to be framed under section 19 would lay down the procedure to be followed by the Managers when investigating and determining the claims brought against the estates taken under charge, the rate of interest to be allowed, and the order in which the admitted claims of the creditors were to be paid off.

His Honour THE LIEUTENANT-GOVERNOR was about to make a remark on the very point which His Excellency had just mentioned. These rules were not intended to provide for any thing inconsistent with the object of the Act. It was laid down in section 8 that the Manager was to determine the amount of the debts and liabilities justly due to the several creditors, and therefore the rules would, he presumed, provide for matters of detail, such as the manner in which notices should be served on the creditors, the form in which the statements of claims should be drawn up, the order of paying debts and liabilities found to be due, the rate of interest to be paid, and the security to be given by the subordinate officers. The rate of interest would be the only really important matter which would come under the operation of these rules. His HONOUR was anxious to draw the attention of his hon'ble friend Rájá Nárendra Krishna to section 12. The object was not to undertake the management of property which was hopelessly involved, but only property the condition of which admitted of its recovery, and then after it had been set in order to restore it to the owner. He was particularly careful to explain that it was not intended to take those estates under management which were so irretrievably involved that it would be impossible to reclaim them.

His Excellency THE PRESIDENT said:—"After the remarks made by my Hon'ble friend Mr. Hobhouse, I think that it would be desirable, in view of the further consideration of the question of appeal, to postpone the motion that the Bill be passed. At the same time it will be well to consider the scope of the rules by which the procedure of the Manager will be guided in determining the debts of creditors. It must be remembered that, while for political reasons, the Government of India in this case, and in former cases in other parts of India, have passed laws with the object of clearing certain encumbered estates from their debts, it is far from the intention of Government to interfere in any way with the proper and legitimate rights of those persons who have lent money on security to the owners of the estates; and, in all these measures, every care must be taken that justice is done to the fair rights of those persons. That is the intention of the Legislative Council in this Bill; and it of course must be provided that—as the Lieutenant-Governor has pointed out—the rules which are to be enacted under the Bill shall be such as that only forms of procedure, coupled, perhaps, with some regulation of the rate of interest to be allowed, shall be comprised in the rules, so that they shall not interfere with the duty of the Manager in determining the amount 'justly due' to creditors. He must act, as the Hon'ble Mr. Hobhouse has pointed out, something like a Commissioner of Bankruptcy going into the merits of each case, without any bias, and come to a conclusion as to what the liabilities really are. I have no doubt that the rules were only intended to have this effect, and probably it may be found that the introduction of a few words into clause 8 will make this clear."

The further consideration of the report was postponed.

CRIMINAL TRIBES ACT EXTENSION BILL.

His Honour THE LIEUTENANT-GOVERNOR also introduced the Bill to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal, and moved that it be referred to a Select Committee with instructions to report in one week. He said that it would be in the recollection of the Council that at the last meeting he described the tribes of a nomad and criminal character to which it was intended to apply this Act. So he had nothing to add on this occasion, save just briefly to state that this Bill was simply an extending Bill, and that the object was effected by inserting in the first section the word "Bengal;" so as to make the Act apply not only to the territories under the Lieutenant-Governor of the North-Western Provinces, but also to those under the Lieutenant-Governor of Bengal.

The Hon'ble MR. BAYLEY wished to say one word in explanation as regards the necessity of this Bill. He believed objection had been taken to the original action of this Council and of the Government of India in framing the previous Bill so as to exclude the Lieutenant-Governorship of Bengal. He could only say that this subject was fully and deliberately submitted to the then Lieutenant-Governor of Bengal, who at the time—MR. BAYLEY confessed he even then thought that this was a mistake—signified his desire expressly that the Bill should not be extended to the Lower Provinces. Experience had shown that the Lieutenant-Governor was wrong; but the error was not committed either by the Government of India or by this Council.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR then moved that the Bill be published in English in the *Gazette of India* and in the *Calcutta Gazette* in such languages as the Lieutenant-Governor of Bengal shall direct.

The Motion was put and agreed to.

REFORMATORY SCHOOLS BILL.

The Hon'ble SIR ALEXANDER ARBUTHNOT presented the Report of the Select Committee on the Bill to provide Reformatory and Industrial Schools. He should postpone any detailed remarks on the Bill as amended by the Select Committee until the next meeting of the Council, when he proposed to move that the Bill in its amended form be taken into consideration. But perhaps he might on this occasion allude very briefly to one important and material alteration recommended by the Select Committee, which limited the scope of the Bill, which, in fact, limited its operation to one of the two classes of juvenile offenders to whom it was intended to apply. Under section 8 of the Bill as originally framed, it was made applicable to unconvicted offenders who were found to be frequenting the company of criminals or who were without any ostensible means of livelihood. This was a point on which there had been a good deal of difference of opinion. Strong objections had been taken to the section in question by some members of the Native community, especially by the representatives of the British Indian Association. It was also objected to by the Government of Bombay; and on full consideration it appeared to the Select Committee that the measure, which was a somewhat novel measure in Indian legislation, should be carried out in a tentative form, and that, on the whole, it would be best to confine legislation to the case of convicted offenders and defer legislation regarding the classes referred to in the original Bill until

we had seen how the Bill as now amended should work by the test of experience.

The following Select Committee was named:—

On the Bill to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal——The Hon'ble Messrs. Hobhouse and Bayley and the Mover.

The Council then adjourned to Tuesday, the 29th February 1876.

CALCUTTA,
The 22nd February 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department.

Govt Central Press.—No. 418 L. D.—25-2-76.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 29th February 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief, G.C.B., G.C.S.I.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.
Colonel the Hon'ble Sir Andrew Clarke, R. E.; K. C. M. G., C. B.
His Highness the Mahárájá of Vizianagram, K.C.S.I.
The Hon'ble John Inglis, C. S. I.
The Hon'ble T. C. Hope.
The Hon'ble D. Cowie.
The Hon'ble Rájá Nárendra Krishna Bahádur.
The Hon'ble J. R. Bullen Smith, C.S.I.

CHUTIA NÁGPUR INCUMBERED ESTATES BILL.

His Honour THE LIEUTENANT-GOVERNOR presented the Final Report of the Select Committee on the Bill to relieve from incumbrances certain estates in Chutia Nágpur. He said, the Council would remember that at the last meeting a particular point was referred back to the Select Committee, namely, the point relating to the determination of certain rules which were to be set forth by the local authorities on matters in accordance with the objects of the Act. The Committee had considered the question relating to the rules, and now proposed to make the point somewhat more definite and distinct than it was

before. It proposed that the Manager should determine, not only the amount due of the debt, but also the interest due in respect thereof at the date of determination. Moreover, with a view to uniformity,—for there were other Acts of the same nature in other provinces of India,—the Committee proposed that the rules, instead of being made by the local authorities, should be made by the Local Government itself, and that the approval of these rules should be vested in the Government of India. It was considered that, inasmuch as these rules when framed would have the effect of law, the same authority which sanctioned the Act, should sanction also these rules. The Committee had also enumerated the principal subjects in regard to which rules were to be made, namely, security from subordinate officers, notices, procedure, precedence of debts and allowance of interest.

CRIMINAL TRIBES ACT EXTENSION BILL.

His Honour THE LIEUTENANT-GOVERNOR also presented the Report of the Select Committee on the Bill to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA said that, with regard to the broad features of the Act which His Honour the Lieutenant-Governor asked for leave to extend to the Bengal Presidency, he had no objections to offer, and he fully agreed with His Honour that the criminal tribes of Bengal should be placed under the same sort of surveillance to which they were subjected in the North-Western Provinces. But he must draw His Excellency the President's attention to the wording of section 21 of the Act, requiring the owners or occupiers of the land on which any persons belonging to a criminal tribe might reside, to give information to the nearest police-station of their stay and departure from their haunts. His Excellency was well aware that the zamíndárs of Bengal generally did not reside on their estates, which were often situated at a great distance from their dwelling-places, and they could not be expected to have any personal knowledge of the movements of these persons. The zamíndárs would be liable to be punished, under section 22 of the Act, on failing to give the information to the police officers. If this section were applied to the absentee zamíndárs of these provinces, it would be a measure outraging the principles of equity and justice, and would be liable to abuse in its operation. He must, therefore, ask His Excellency to expunge the words from the section, so far as it related to the zamíndárs, before the Act was extended to these provinces.

His Excellency THE PRESIDENT explained that the Hon'ble Member would have an opportunity of discussing that point at the next meeting of the Council, or whenever the motion for the consideration and passing of the Bill was made. At present there was no motion before the Council.

REFORMATORY SCHOOLS BILL.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved that the Report of the Select Committee on the Bill to provide Reformatory and Industrial Schools be taken into consideration. He said that at their last meeting he had mentioned one of the principal alterations which the Select Committee had made in the Bill. He referred to the removal of the section which formed section 8 of the original Bill, and which provided for the application of the Bill not only to juvenile offenders who had been convicted of specific offences, but to boys under the age of fourteen who were found to frequent the company of reputed robbers, house-breakers, thieves, public gamblers, or vagrants, or who were found to be without any ostensible means of livelihood. He had stated on that occasion that there was a strong feeling amongst the Native community against that particular section. He had mentioned also that the Bombay Government were opposed to it. With the permission of the Council, he would read a few lines from the report made by the Government of Bombay. It stated that—

"His Excellency in Council entertains considerable doubts whether this section can be worked without the risk of some injustice. Moreover, if the power is exercised without discrimination, accommodation could not be provided for the large number of children of vagrants, beggars and paupers who are to be found in all large Indian cities. If the section is maintained, Government considers that the age of admission should be limited to under eight years, inasmuch as, after leading a roving life up to fourteen, little impression will be made on a boy who is sent for only two or three years to a reformatory But whatever may be the decision of the Government of India on this point, this Government is persuaded that the class alluded to in section 8 of the Act should not be sent to the same institutions as those to which juvenile offenders described in section 6 and juvenile prisoners described in section 7 are sent."

He had reason to believe that the feeling of the Native community against this particular section was in several parts of India very strong indeed. He was at the same time aware that there was a good deal to be said on the other side of the question. There could be no doubt that amongst the classes aimed at in that particular section, there might be many youthful criminals, if he might so speak, whose consignment to a reformatory would be most beneficial both to themselves and to society. The point was noticed with some force in one of the reports submitted by the Government of Bombay. One of the Commissioners

of Police in that Presidency spoke of one of the classes to which SIR ALEXANDER ARBUTHNOT referred in these terms:—

"A Batak child takes to theft by instinct, just as a pointer puppy points. There is an hereditary transmission of a predatory instinct in all these tribes that is only to be eradicated by many years of careful training, and finally placing them in a position to earn an honest livelihood on easy terms. The only chance of reclaiming them is to take them in hand while they are still mere infants, and retaining them till habits of self-respect are matured."

There was no doubt a good deal of force in the opinions given on that side of the question. But it was equally certain that there was a very strong popular feeling against it. It might be said that the popular feeling to which he had referred, was a feeling very much in the nature of a sentiment; but it was a sentiment which it would be unwise to overlook, and there was nothing more difficult to overcome than a sentiment of this nature. It defied criticism and was impervious to argument. The right course, it appeared to him and to his colleagues in the Select Committee, was in this matter to proceed tentatively, and to postpone legislation on this point until, as he had said the other day, it was shown by the test of experience that the particular measure provided for in the amended Bill was attended with really practical and beneficial results. It was essential that in such legislation we should as far as possible carry the opinion of the people with us. This, as he had said, was one of the main alterations which the Select Committee had made in the Bill.

Two other alterations which might be said to be closely connected with the one he had just alluded to, were the excision of the section which enabled municipalities to establish or contribute to the cost of reformatories, and the removal of the provision which enabled the Government to charge the cost, or a portion of the cost of these institutions, to the parents of the children who might be confined in them. This latter point was very closely connected with the removal of section 8 of the original Bill. For he need hardly say that it would scarcely be equitable that in the case of convicted juvenile offenders their relatives should be charged for their maintenance. There would be no more justification for such a charge than there would be for similarly charging the maintenance of the adult criminals in our jails.

In regard to the question of municipalities being saddled with these charges, although the section as it stood was merely an enabling section, he gathered from the reports which had been received by the Select Committee that very strong objections were entertained on the point. It was felt that our municipalities had, as it was, plenty to do with all the resources available to them, whether it were in our capitals or our country towns. Every anna they

could collect without oppression and without imposing undue burdens upon the people was wanted for matters more intimately connected with municipal administration than the maintenance of reformatories could be said to be. And it might not be unfairly urged that there was no more reason for charging municipalities with the cost of juvenile reformatories than there was for charging them with the cost of the maintenance of jails or of the Courts for the administration of justice.

Another alteration which the Select Committee had made in the Bill, was raising the age at which juvenile offenders could be sent to reformatories from fourteen to sixteen, and raising the age to which they could be detained in reformatories from sixteen to eighteen. On the latter point, he thought there was a very general consent. It was felt that the age of sixteen was too low a maximum, and that in order that the operation of the system might be really beneficial, it was necessary that it should be in the power of the authorities to detain boys in reformatories up to the age of eighteen. In regard to the maximum age for admission, the Select Committee had thought it wise to follow the provisions of the Code of Criminal Procedure on this point as they now stood. In section 318 of that Code, the age of sixteen was laid down as the limit of age up to which juvenile offenders could be sent to reformatories.

Another alteration of some importance was contained in section 7 of the amended Bill, which corresponded with section 6 of the original Bill. In section 6, it was provided that whenever any boy, who in the judgment of the Court before which he was charged was under the age of fourteen years, was convicted of an offence punishable under the Indian Penal Code with transportation or imprisonment, the Court might, in lieu of sentencing him to transportation or imprisonment, direct him to be sent to a reformatory school. It was now provided that the Court should be obliged to pass sentence, and that when, having passed sentence either of transportation or imprisonment, the Court considered that the offender was under the age of sixteen and was a proper person to be an inmate of a reformatory school, it might direct that, instead of undergoing the sentence, he should be sent to a reformatory school and be there detained for a period which should not be less than two years and not more than seven years, subject to certain rules subsequently provided for. In a succeeding section, the maximum limit of the period of detention was fixed at eighteen years. There was also a provision made in one of the succeeding sections which enabled the Government at any time to order the discharge of a youthful offender from a reformatory school, and to order him to undergo the residue of his sentence at such place as the Local

Government thought fit. The Committee considered that these were improvements on the provisions of the original Bill, inasmuch as, under the original Bill, no sentence would have been passed, and the youth who was sent to a reformatory, however undesirable it might be to retain him in the reformatory, would have to be kept there, or at once set free. It was of course possible, in fact probable, that there would be cases, however much care might be taken in commuting the original sentence, in which it would be found that the detention of a youth in a reformatory would be beneficial neither to himself nor to those who were associated with him.

There was an important provision which had been added by the Select Committee in section 22 of the amended Bill. It laid down that the Governor General in Council might from time to time make rules for regulating the periods for which Courts and Magistrates might send youthful offenders to reformatory schools according to their ages, the nature of their respective offences, or other considerations. This was a point which had engaged the attention of the Select Committee, and their feeling was that in carrying out the provisions of legislation of this description which, both to the Courts as well as to the general community, would be sometimes of course somewhat of a novel character, it would be very desirable that the Courts and Magistrates should have the advantage of that guidance which might be supplied to them by the Government, acting on the reports and advice of the executive officers who would be employed in administering and controlling these institutions. These officers would probably be in a far better position to judge of the actual working of such institutions than the Courts could be, and would be able to offer suggestions to the Government which, when embodied in the rules, would be of invaluable assistance for the guidance of judicial officers in the working of the Act. He thought he had now noticed all the principal alterations made in the Bill by the Select Committee.

There were a few verbal alterations which probably would not escape the notice of hon'ble Members, but with which he need not now detain them. It only remained for him to make the motion which stood in his name that the Report of the Select Committee be taken into consideration, and to express his hope that this measure, if it received the approval of the Council and became law, would be a valuable means of draining the jails of juvenile offenders who were brought up in crime, and who so largely contributed to the increase of the criminal population of this country. Much had been done of late years for the improvement of our jails and the general system of jail management; much money had been spent upon these institutions;

and much care had been bestowed upon them. Great efforts had been made to render the jails reformatories, as well as places of punishment, for adults; and what had been done in this direction appeared to make it all the more obvious that it was the duty of this Council no longer to defer carrying into effect those measures which the experience of other countries proved to be best adapted for the reclamation of the young.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA said that the Bill as it now stood would prove beneficial to juvenile offenders who might be sentenced to various periods of long imprisonment. It would allow these criminals to be transferred to a reformatory where they would receive an industrial education which might be of use to them in life. He might inform His Excellency the President that in Bengal youthful criminals as a class, as far as he (RÁJÁ NÁRENDRA KRISHNA) was aware, did not exist; and if the legislature had passed a law to punish and reform every youth below the age of eighteen on the report of a police officer that he had no means of honest livelihood and kept the company of bad characters, and directed that he must be confined in a reformatory school and there learn some handicraft in the course of a few years, the Government would create a class of men who, after release, would be regarded with distrust in this country. The reformatory section of the jail should be kept separate from the rest in which old offenders were confined, as it was always desirable that juveniles should be completely dissociated from veteran offenders.

He was glad to bring to His Excellency's notice the careful attention which the Hon'ble Mover had paid to his suggestions. But for that and the powerful support accorded to him by the Hon'ble Mr. Hobhouse, the Bill would not have received its present mild and unobjectionable form. He therefore begged to request that the Bill be passed into law.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER ARBUTHNOT moved that the Bill as amended be passed.

His Excellency THE PRESIDENT said:—"I wish to say, before this Bill passes, that, for my own part, I consider it to be a very important amendment in our penal laws. As the Hon'ble Mover of the Bill has informed the Council, in many countries great attention has been paid to the improvement of jails, not only with the object of making them places of punishment, in which the sentences given may deter offenders from repeating their crimes, and, by their example, deter others from committing similar crimes, but also, with the desire of introducing, as far as possible, a reforming element into prison disci-

pline. I believe, however, that in this latter respect the result of experience has not been encouraging with regard to the reformation of adult offenders, however admirably prison discipline may have been carried out. Men who, by a gradual course of crime, becoming worse and worse as years go on, constitute the criminal classes in great towns, are, I fear, seldom influenced for the better by prison discipline.

"The only measures which, so far as I am aware, have been really successful in reforming offenders, are those which have been carried out in France, in England, and possibly also in other countries, for the reformation of juvenile offenders.

"It has been found that if a boy, on his first offence, instead of being treated as an ordinary criminal and sent for three months or less to an ordinary jail and there subjected to the prison discipline applied to common offenders, is sentenced for a much longer period—say from three to five years—and sent to a reformatory institution where he is kept under restraint and taught some industrial occupation or trade, he under those influences, and by the operation of the ordinary laws of human nature, is usually discharged from the reformatory with a fair prospect of giving up his evil courses; he takes up the industrial occupation he has learnt in the reformatory, and becomes a useful member of society.

"I believe that the results of the reformatory institutions in England have been, that out of every hundred boys sent to them, no less than eighty have, by experience, been found to have been thus reclaimed.

"It seemed to the Government that a measure so hopeful as this, might with perfect propriety be applied to India; and the result of our consideration of the subject was the introduction of the Bill which is now about to be passed.

"We are much obliged to the Select Committee and to the Hon'ble Mover of the Bill for the pains they have taken with it, and also to Rájá Nárendra Krishna, who has served on the Committee, for his suggestions. The Committee have limited, in the first instance, the operation of the Bill to juvenile offenders, leaving it for future consideration whether it shall be extended to boys who have no ostensible means of livelihood, and who associate with bad characters, but have not actually committed offences against the law. I believe that this modification of the Bill is wise; but, at the same time, I hope that the operation of reformatory institutions will be so successful that, at some future time, the legislature may be able to extend the provisions of this Act to the

other class to which it has been applied in England. There are, of course, difficulties in India, with respect to this measure, which do not exist in England; but I feel satisfied that by the co-operation of the enlightened members of society, both European and Native,—for it is essential that Natives of India of different religious persuasions shall be associated with the management of these institutions,—this measure will be successful, and that the results will show that the same principles which are applicable to juvenile offenders in England and in other countries, are equally applicable to juvenile offenders in India.

"To me, in visiting, as I have done, the jails of Calcutta, it was painful to see boys of a very tender age confined in those prisons. I have seen in one of these jails young boys wearing narrow iron bracelets. These iron bracelets were, if I may so say, ornamented by a number of small pieces of iron, like keys, running along the bracelet, each small piece being the token of a separate conviction for an offence. There was certainly one boy that I saw, who could not have been more than twelve or thirteen years of age, and who had five separate convictions so denoted by the little pieces of iron running along the iron bracelet on his wrist. I was grieved to feel that if these boys had been, on their first offence, sent to a reformatory institution, they would, in all probability, have been saved from the life of crime to which, I fear, they are doomed under present circumstances.

"I would say one word more on the subject of this measure, and that is, that a great responsibility will rest upon Magistrates and the Local Governments in carrying the Act into operation. It is, I think, hopeless to expect the Act to work properly if these reformatory institutions are started by filling them with a class of boys who have already four or five separate convictions against them, that is to say, who are confirmed thieves and bad characters, and whom, if put into a reformatory institution, there would be little hope of reclaiming. The manner in which I trust the Act will be carried into effect is, that great care will be taken in the selection of boys for those institutions, and that, for the next part, boys should be put in them on their first offence, so that the salutary influences of industrial education may be applied to those who offer the best prospect of being permanently benefited."

His Honour THE LIEUTENANT-GOVERNOR was anxious to make one remark, and it was this, that he for one, and those who thought with him, very cordially supported the measure as far as it went, and they hoped that the Bill, if passed, would immediately bear fruit, and be of utility, by the immediate establishment of a reformatory in Calcutta. But he should

not like the Council to be under the impression that he concurred in the Bill in its limited shape. It was now confined to those juveniles who had actually committed offences. He was anxious to inform the Council that the Bill would not be sufficient for the reformation of these classes, who were growing up into crime; and he thought it much to be regretted that his Hon'ble friend Rájá Nárendra Krishna, had succeeded in carrying that amendment in Select Committee, as it deprived the Bill of at least half its usefulness. He was anxious to impress on the Council that there were hundreds, and indeed thousands, of persons of tender age who were growing up in this capital in a state which infallibly led to crime. Their becoming criminals was only a question of time, and it was a question, not of uncertainty, but one of unfortunate certainty; for confirmation of that opinion he confidently appealed to the knowledge of every Member round the table. Therefore, he was at a loss to understand on what principle the Select Committee had so far yielded to what he considered the mistaken opinion of his Hon'ble friend. His Honour supposed the Hon'ble Member thought it was dangerous to place such power in the hands of the Police, who might be empowered to lay hold of a boy who, in their opinion, was a criminal in the initiatory stage. He begged to point out, in answer to that objection, that nothing would be easier than to bring a boy before a Magistrate, and nothing was easier than for the Magistrate to come to a determination whether a boy had any ostensible means of livelihood, and whether he was, or was not, forming habits, and growing up in associations, which would lead to crime. In this country, he appealed to the knowledge of every Member of the Council who had experience in the working of the criminal law, bad livelihood was an offence known to the criminal law. There was not an adult who might not be brought up on a charge of bad livelihood, and the working of the bad livelihood law with strictness, judgment and consideration was about the most important matter for the protection of society in the whole range of the criminal law. He ventured to affirm that there was no matter of such consequence to the interests of the country as the restraint of bad characters. There was no part of India which so much needed it as Bengal proper. There was in no province more bad characters who were at large, or more at liberty to pursue their evil courses, than in Bengal. If that was so in the case of adults, he wanted to know on what reasonable principle could a distinction be made in reference to juveniles. If it was easy to prove before a Magistrate that an adult had grown up as a bad character, then what possible difficulty could there be with reference to juveniles? He deemed it necessary that there should be no mistake, and therefore he wished to say that he, and those who agreed with him, considered that the omission made by the Select Committee was most unfortunate, and that it deprived the

measure of half its usefulness. He would have moved a substantive amendment, but, he understood, it was doubtful whether it would be supported after such a restriction had been accepted by the Select Committee; and therefore he must perforce content himself with accepting the Bill in its mutilated shape. As far as it went, he agreed with all that had fallen from the Hon'ble mover of the Bill, and he concurred in his anticipations. And he only hoped that, if the present scheme were found insufficient, there would be no hesitation at some future time to extend the measure to those juvenile persons who, although not actually convicted of any crime, were growing up in criminal courses. If he thought there was any chance of the matter being further considered, he would have moved an amendment. He believed it to be of the highest importance, when a Bill was framed on the point now before the Council, namely, the reformation of criminal youth, that it should contain a provision of the kind to which he had referred.

The Hon'ble MR. HOBHOUSE said that as His Honour the Lieutenant-Governor had referred to the decision of the Select Committee in terms of dissent, he thought it right—having been one of that Committee who decided to take the prudent and cautious course, which generally led to the success of a new experiment—to say that, whatever opinions there might have been to the contrary, the great body of the local opinions which had been received was most decidedly against any attempt to extend the measure to boys who were not convicted of any offence. He would read to the Council a report which was received from the general Committee of the Justices of the Peace for Calcutta on this Bill, which was only a specimen of the opinion prevailing on the subject. They said:—

"We are of opinion, having regard to the condition of this country, the almost impossibility of European Magistrates understanding the social customs of the lower classes, and, above all, the great difficulty in securing trustworthy evidence, that to pass an enactment enabling a Magistrate to arrest a boy under fourteen years of age, not charged with any offence, and order his confinement in a reformatory for a period varying from two to seven years would be a most arbitrary and unjust proceeding. In this country, children are seldom left in the deserted state which is too often the case in England. Here the ties of relationship are held to be sacred, and any orphan left by its parents in a state of destitution would, as a rule, be pretty certain to be adopted by some near relative.

Surely, for a Magistrate to step in between a child and its parent, guardian or natural protector, and to declare that the child shall be confined in a reformatory jail, and there maintained and educated under the orders of Government for a period varying from two to seven years, is a proposition which cannot be justified by any philanthrophic arguments. It may be that, in some exceptional cases, such a course might be for the benefit of the child; but we are unanimously of opinion that a Native child confined with a number of other declared

vicious companions would, in all probability, learn far more vice than if left with its natural guardians. Of moral training it could get but little from the class of persons likely to be placed in charge of such reformatories; besides, to separate morality from the dogmas of religion is not possible, and the question of moral training is therefore surrounded with difficulties which it would be most embarrassing for the Government to deal with.

For these reasons we strongly object to the provisions of section 8, whereby a Magistrate may order a boy, convicted of no offence against the law of the land, to be detained in confinement for a period of not less than two years, and not more than seven years; and we consider that the proposed section will do more harm than good; and, moreover, that any such arbitrary attempt to interfere with the education and training of the Native children of this country would be misunderstood and misinterpreted throughout the land, and might produce serious consequences. We hold, then, that the proposal is wrong in principle, impracticable in working, and, as applied to this country, fraught with political danger."

The Committee had received many arguments of the same kind from different parts of the country. He did not now go into the question whether their arguments were sound or unsound; whether they might or might not be countervailed by other arguments such as those used by the Lieutenant-Governor; or whether, when people had actual experience in the working of reformatories in the case of convicted offenders, they would not look with a more favourable eye upon a Bill which dealt with the case of young persons likely to become offenders. They had here a body of people representing the very class of persons who would have to administer the law, telling them that, in their opinion, the enactment would be utterly opposed to the notions of Indian Society; and he thought it would be inexpedient to pass the law as originally proposed in the face of that opinion. And he might mention that Native opinion was absolutely unanimous in the same direction. Therefore, though he did not profess to know enough of Indian Society to say whether that opinion was right or wrong, what he did say was that, in passing a measure necessarily so tentative, so experimental as this, to begin prudently, to deal first with those subjects in which we could see our way clearest, and in which our action would excite least opposition, was the course best calculated to ensure success instead of failure for the movement.

The Hon'ble Mr. Hope did not think he ought to allow the occasion to pass without correcting an impression which had been conveyed, perhaps unintentionally, by the remarks which fell from the Hon'ble Rájá Nárendra Krishna, that the important change made in the Bill since it was introduced had been made in consequence of the support of certain members of the Committee, of whom Mr. Hope was not one. He had only to say for himself that this change met with his concurrence, and, in agreeing to it, he was influenced

by the general representations which had been received from various parts of the country from local officers, and not, as far as he was aware, by any representations made in Committee. There could be no doubt that, as urged by His Honour the Lieutenant-Governor, this alteration did rob the Bill of a large portion of the advantages which, it had been hoped, would result from it. But, at the same time, it appeared to him that the practical difficulties brought to their notice by local officers in different parts of the country were so serious, that they placed beyond their reach the advantage which, more than any other, he would have desired had it been possible to attain it.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA observed that he was of opinion that the Hon'ble Mr. Hobhouse objected to the Bill being passed in its original form.

The Hon'ble SIR ALEXANDER ARBUTHNOT said that, with reference to the remarks which had fallen from His Honour the Lieutenant-Governor, he had very little to add to the reply given by his Hon'ble friend Mr. Hobhouse. As he had said in his opening observations, he believed that there was a great deal of force in the arguments which might be adduced by those who thought with the Lieutenant-Governor on this subject. He himself fully admitted that if the measure could have been enacted, and could have been satisfactorily worked with the general consent of the people —with the general consent of the leaders of Native opinion—it would have rendered the Bill a very much more beneficial measure than it was now likely to be. But he held, as he said before, that this was a description of legislation in which it was eminently the duty and the policy of the Government to proceed with care and with caution, and, so far as was possible, not to go in advance of that which might be required as a fair representation of popular opinion. Now in this matter he was not prepared to say that, if they could take the opinion of the Native community in general, they should find them in favour even of the more modified form of legislation which the Committee recommended this Council to adopt. He gathered that at present there was, if not a positive antagonism, a considerable indifference, and a certain amount of opposition, to the establishment of reformatories for the reclamation of juvenile offenders of any class. There was, he believed, a very general feeling that, even in the case of convicted offenders, the powers which this Bill would give to the judicial authorities of largely enhancing the periods for which juvenile offenders might be detained in reformatories, were open to question. Therefore, he thought it was of the greatest importance that, while they followed the principle of legislation which had been adopted, though in an imperfect form, some fifteen years ago by the framers of the Code of Criminal Procedure—while

they supplemented that measure in such a way as to render it of real utility in regard to the persons at which it aimed—they should for the present go no further. He thought that the fact that the framers of the Code of Criminal Procedure, who he had no doubt had carefully considered this as well as the other provisions of that Code, did not consider it expedient to include any provision in the enactment of 1861 as to unconvicted offenders, was deserving of their serious consideration, and that they, at this time, ought not to decide to go further. The Lieutenant-Governor had said that the question of persons of the particular class to which he referred falling into crime was merely a question of time. These words, "a question of time," reminded SIR ALEXANDER ARBUTHNOT that in this matter the question of time was one of the essential points. As His Excellency had remarked, they should look forward to the time, and he hoped not a very distant time, when they should be able to carry this legislation further in the direction desired by the Lieutenant-Governor. But he felt persuaded that at the present time it would greatly enhance the unpopularity of the measure, and probably, as his friend Mr. Hobhouse had observed, it would go far to render it inefficacious. He therefore thought the Council would do well to adhere to the Bill in its present limited form, and to pass it in that form.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM apprehended there could be no question as to the expediency of the main object proposed by the Bill, namely, the separation of youthful criminals from the evil influences of jails and the training of them to some honest industry. How, having regard to the circumstances of the country, that object might be best attained was another matter, and one in which a perusal of the papers sent round with a copy of the Bill showed that a very considerable diversity of opinion existed. As the measure was confessedly in great part an experimental measure, and approving as he did of the object of the Bill, and seeing that the mode of carrying out that object was the result of a very careful consideration of the opinions of all those whose opinions were of most weight in this matter, he begged to give his vote in favour of the passing of the Bill. If after coming into operation, it were found that the object of the Bill was not well attained by the procedure therein prescribed, he presumed there would be no difficulty in making the necessary change.

There was one point to which he would allude as desirable in his humble opinion, and that was that the education to be given in these reformatory schools should be chiefly in the direction of teaching some handicraft or useful manual industry, rather than mere book-learning. The Bill left these matters to

be dealt with by rules to be framed at the discretion of the Board of Management with the sanction of the Local Government. HIS HIGHNESS would suggest whether it would not be well to direct by the Bill the course it was desired that the education provided in these schools should take.

The Hon'ble SIR ALEXANDER ARBUTHNOT observed, with reference to the concluding remarks of His Highness the Mahárájá of Vizianagram, that the industrial training of youthful offenders was provided for in the twenty-first section of the Bill, and there could be no doubt that, by the rules sanctioned by the Local Government, adequate provision would be made for that which was one of the main objects of the Bill, namely, the industrial training of juvenile offenders. It was also distinctly provided for in the fifth section.

The Motion was then put and agreed to.

INDIAN MUSEUM BILL.

The Hon'ble MR BAYLEY moved for leave to introduce a Bill to provide for the management of the Public Museum at Calcutta. He said that it was but ten years since a Bill with a very analogous title, namely, a Bill to provide for the establishment of a Public Museum in Calcutta, had been introduced in Council, and became law as Act XVII of 1866. The object of that measure was to give effect to an arrangement entered into between the Government of India and the Asiatic Society of Bengal, by which the Asiatic Society gave their valuable collection to form the nucleus of a public museum. It was one condition—he might say the main condition—of this surrender, that a building should be erected to contain their collection and others which from time to time might be incorporated with it. Another provision was that in the same building accommodation should be provided for the Asiatic Society themselves. Measures had been taken to give effect to those conditions, and a building had been erected which was now approaching completion. But it had been found that the accommodation actually provided was not sufficient to give to the Asiatic Society the room that they required without unduly cramping the space required for the exhibition of the collection which had now been accumulated; for, although, as provided by the Act, plans for the building were submitted to, and approved by, the Council of the Asiatic Society, yet the delay which had unavoidably occurred in the construction of the building, and the unexpected growth of the collection, had caused larger demands than had been expected for the reception of the latter. The Government had appointed a Committee to consider how the difficulty could best be remedied, and they recommended that an offer should be made to the Asiatic Society of a sum of Rs. 1,50,000

for surrendering the accommodation to which they were, as above explained by law, entitled. The Council of the Asiatic Society having been consulted, signified their acceptance of this offer. And the object of the Bill he asked leave to introduce was to provide legally for the new arrangement and to cancel the provision which Act XVII of 1866 contained for securing this accommodation in the Museum building to the Asiatic Society It might have been thought that a simple repeal of certain sections of Act XVII of 1866, notably the twelfth section, would have sufficed to effect this object. But it had been found that many of the minor provisions of the Bill had been framed in reference to that condition, and that it was also desirable to introduce certain minor amendments which the working of the Act had shown to be necessary during the ten years it had been in operation. It was therefore proposed to repeal Act XVII of 1866, and to re-enact it with the omission of the provision to which he had alluded for securing accommodation to the Asiatic Society in the Imperial Museum, and with certain minor amendments, which, as he had said, experience had shown to be necessary. If he got leave to bring in the Bill, he hoped to introduce it at the next meeting of the Council, and then to explain what particular amendments were proposed.

The Motion was put and agreed to.

The Council then adjourned to Tuesday, the 14th March 1876.

CALCUTTA,
The 29th February 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department.

Govt. Central Press.—No 489 L. D —10-3-76 —230

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 14th March 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.

His Honour the Lieutenant-Governor of Bengal.

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble John Inglis, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rájá Nárendra Krishna Bahádur.

The Hon'ble J. R. Bullen Smith, C.S.I.

The Hon'ble F. R. Cockerell.

NEW MEMBER.

The Hon'ble F. R. COCKERELL took his seat as an Additional Member.

CHUTIA NÁGPUR INCUMBERED ESTATES BILL.

His Honour THE LIEUTENANT-GOVERNOR moved that the Final Report of the Select Committee on the Bill to relieve from incumbrances certain estates in Chutia Nágpur, be taken into consideration. He said that at the last meeting, when he presented the Report, he had explained the several points to which the Report adverted. He would not now repeat that explanation.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR also moved that the Bill as amended be passed. He said that the Final Report related to the framing of rules by the Lieutenant-Governor for the preparation of the schedule of debts, particularly the rates of interest payable thereon, and the Report of the Committee had dealt completely with that particular subject. He believed the Bill might now safely be passed. He had recently had the advantage of travelling in the portion of the provinces to which the Bill would apply, and he could assure the Council that the provisions of the Bill, if passed, would prove useful to the interesting and important tracts to which it referred.

The Motion was put and agreed to.

CRIMINAL TRIBES ACT EXTENSION BILL.

His Honour THE LIEUTENANT-GOVERNOR then moved that the Report of the Select Committee on the Bill to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal, be taken into consideration.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA said, at the last meeting of the Council he had the honour to represent the hardship and injustice to which the zamíndárs of these provinces would be subjected if the provisions of sections 21 and 22 of the Criminal Tribes Act of 1871 were applied to them. He had on that occasion fully stated to the Council that the zamíndárs could not possibly have any personal knowledge of the movements of these criminal tribes, in consequence of their not living on their estates. His Excellency was aware that the mofussil Police was now superintended by competent European officers, and these tribes could scarcely escape the vigilance of such officers when they might attempt to reside in some places. Besides, there were other sources of gaining information of their whereabouts. With reference to the letter of Mr. Secretary Mangles, communicating the views of His Honour the Lieutenant-Governor of Bengal on the subject of RÁJÁ NÁRENDRA KRISHNA's proposed amendment, he begged to observe that these criminal tribes did not permanently reside in a particular spot, like the offenders alluded to in section 90 of the Criminal Procedure Code, who might be supposed to be the residents of the locality where they committed crimes; and even the agents of the landlords had no means of successfully watching, or knowing, the movements of these criminal tribes, which could only be ascertained by an efficient detective Police. The sections of the Criminal Tribes Act did not make the agents of zamíndárs liable to penalty, but threw the whole responsibility upon the landholders, on failure to give the information recited therein; but the Criminal Procedure Code section included zamíndárs, or their agents, clearly intending thereby that the

non-resident zamíndárs should not be held liable for not giving the information required under that section. However much he might appreciate the duty of the zamíndárs in helping the Police, he considered it a great hardship towards them if they were required to do things which lay beyond their power. He therefore begged to move that the following clause be added to the Bill:—

"2. Nothing in this Act shall be deemed to extend to any part of the territories under the government of the Lieutenant-Governor of Bengal so much of sections 21 and 22 of the Criminal Tribes Act, 1871, as requires owners and occupiers of land to give information at police-stations."

The Hon'ble MR. INGLIS said, that he should vote against the amendment proposed by the Hon'ble Rájá Nárendra Krishna, as he was certain that if the owners and occupiers of land in villages where a criminal tribe or class that had been brought under the Act resided, were relieved from the duties imposed on them by section 21, it would be impossible for the Local Government to carry out the purposes for which the Act was about to be extended to Bengal. Section 21 required the village headmen, the village chaukídárs, and the owners and occupiers of land in villages where a criminal tribe may have been directed to reside by the Local Government, to give certain information regarding them to the Police. If the amendment were passed, the only persons then remaining responsible for giving this information would be the village headmen and the village chaukídárs. The term "village headmen" meant, in the North-Western Provinces, the Panjáb and Oudh, the village lambardárs, from whom engagements for the payment of the Government revenue had been taken as representatives of the village community. These men held a recognized position in their villages and exercised considerable influence over the co-sharers, the tenants, and all other residents in the estate, and were perhaps the best men to whom the Police could look to for the information wanted about these criminal tribes. There were, however, no such men in Bengal, and, consequently, the only persons who would be bound to assist the Police in the manner prescribed by section 21, if the Hon'ble Member's amendment were carried, would be the village chaukídárs; and he need scarcely say that if that were the case, it would be hopeless to expect that the Act could be worked successfully.

The duty of assisting the Police by giving information regarding the commission of crimes, the resort of bad characters to their estates, and other similar matters, was imposed on the landholders of Bengal many years ago, shortly after the permanent settlement, when the police powers they had pre-

viously exercised were taken from them, and the police in the mofussil were placed directly under the charge of the district officers. He would read to the Council the provisions of the old Regulations which imposed these duties on the landholders of Bengal. Section 2 of Regulation VI. 1810 provided that,—

"All zemindars, talookdars, and other proprietors of lands, whether malgoozary or lakheraj, all sudder farmers and under-renters of land of every description, all dependent talookdars, all naibs, and other local agents, all native officers employed in the collection of the revenues and rents of lands on the part of Government or of the Court of Wards, are hereby declared especially accountable for the early and punctual communication to the Magistrates, and police darogahs, either publicly or secretly, as the informants may judge proper, of all intelligence which they may obtain respecting the resort to any place within the limits of the estate or farm held or managed by them, of any person or persons of the different classes of people ordinarily known by the appellation of dacoits, cozauks, thugs, or buddecks, or of any other description of robbers."

Then section 10 of Regulation I. 1811 enacted,—

"All zemindars, talookdars, and other proprietors of lands, whether malgoozary or lakheraj, all sudder farmers and under-renters of land of every description, all dependent talookdars, all naibs and other local agents, all native officers employed in the collection of the revenue and rents of lands on the part of Government or of the Court of Wards, are hereby declared accountable for the early communication to the Magistrate either secretly or publicly, of all information which they may obtain respecting the residence of any notorious receiver or vendor of stolen property within the limits of the estate or farm held or managed by them."

Then section 4 of Regulation III. 1812 enacted,—

"Regulation VI. 1810 defines the duty required from the zemindars and others, with respect to the resort of criminals within the limits of the estates or farms held or managed by them.

"With the view of affording to the Magistrates more early and punctual information of public offences committed within the limits of their respective jurisdiction, all zemindars, talookdars, and other proprietors of lands, whether malgoozary or lakheraj, all sudder farmers and under-renters of land of every description, all dependent talookdars, all naibs and other local agents, all native officers employed in the collection of the revenue and rents of lands on the part of Government or of the Court of Wards, are hereby declared especially accountable for the early and punctual communication to the Magistrates or Police darogahs, of all information which they may obtain respecting the commission of robberies, and likewise regarding the offence of breaking into houses, tents, or boats, or other places of habitation, perpetrated within the limits of the estate or farm held or managed by them."

Then section 2 of Regulation VIII. 1814 enacted,—

"With the view of affording to the Magistrates more early and punctual information of public offences committed within the limits of their respective jurisdictions, all zemindars,

talookdars, and other proprietors of lands, whether malgoozary or lakheraj, all sudder farmers and under-renters of land of every description, all dependent talookdars, all naibs and other local agents, all native officers employed in the collection of the revenue and rents of lands on the part of Government or of the Court of Wards, are hereby declared especially accountable for the early and punctual communication to the Magistrates or Police darogahs, of all information which they may obtain respecting the commission of murders, and likewise regarding the offences of arson and theft, perpetrated within the limits of the estate or farm held or managed by them."

Lastly, section 33 of Regulation XX. 1817 provided that,—

"The police darogahs shall take every favourable opportunity, when employed on local inquiries, as well as on other occasions, of explaining to the zemindars, talookdars, and other proprietors of land, malgoozary or lakheraj, to the sudder farmers and under-renters of land, dependent talookdars, naibs, and other local agents, and to all native officers employed in the collection of the revenues and rents of land, on the part of Government or the Court of Wards, the duties incumbent upon them, and the responsibility attached to them under the provisions of Regulations IX. 1808, VI. 1810, I. 1811, III. 1812, VIII. 1814, and any other Regulations in force, to communicate to the Magistrates and police darogahs, either publicly or secretly, all information which they may obtain respecting the commission of murder, robbery, house-breaking, arson, or theft, within the limits of the estate or farm held or managed by them respectively; or respecting the resort of any known robbers, of whatever description, or the residence of any notorious receiver or vendor of stolen property, within such limits, as well as to afford their assistance in the apprehension of proclaimed offenders, and of all persons for whose apprehension warrants may have been issued by the local Magistrate in pursuance of section IX, Regulation III. 1812; and generally to co-operate with, assist, and support the police officers of Government in maintaining the peace, preventing, as far as possible, affrays and other criminal acts of violence, or apprehending the offenders under the rules and restrictions which have been enacted and promulgated in the Regulations."

These sections of the old Regulations were repealed by Act X of 1872 (the Criminal Procedure Code), but their substance was re-enacted in sections 89, 90 and 162 of that Act. Section 89 applied to the public generally and provided that—

"Every person aware of the commission of any offence made punishable under sections one hundred and twenty-one, one hundred and twenty-one A, one hundred and twenty-two, one hundred and twenty-three, one hundred and twenty-four, one hundred and twenty-four A, one hundred and twenty-five, one hundred and twenty-six, one hundred and thirty, three hundred and two, three hundred and three, three hundred and four, three hundred and eighty-two, three hundred and ninety-two, three hundred and ninety-three, three hundred and ninety-four, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, three hundred and ninety-eight, three hundred and ninety-nine, four hundred and two, four hundred and thirty-five, four hundred and thirty-six, four hundred and forty-nine, four hundred and fifty, four hundred and fifty-six, four hundred and fifty-seven,

four hundred and fifty-eight, four hundred and fifty-nine, or four hundred and sixty of the Indian Penal Code, shall, in the absence of reasonable excuse, the burthen of proving which shall lie upon such person, give information of the same to the nearest Police officer or Magistrate."

Section 90 applied specially to landholders and persons specially connected with the land, and provided as follows :—

"Every village headman, village watchman, owner or occupier of land, or the agent of any such owner or occupier, and every native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, is bound forthwith to communicate to the nearest Magistrate, or to the officer in charge of the nearest Police station, any information which he may obtain respecting—

(*a*) the residence of any notorious receiver or vendor of stolen property at the village of which he is headman or watchman, or in which he owns or occupies land, or collects rent or revenue, as the case may be;

(*b*) the resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber;

(*c*) the commission or intention to commit suttee or other non-bailable offence at or near such village;

(*d*) the occurrence of any sudden or unnatural death."

Then section 162 provided,—

"The Magistrate of the District may direct a warrant or warrants to landholders, farmers or managers of land, for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

"Such landholder or other person shall acknowledge the receipt of the warrant and shall be bound to execute it, should the person for whose arrest it was issued enter on or be in his estate, farm or land under his charge."

The Council would thus see that the duty imposed upon the landholders of Bengal by section 21 of the Criminal Tribes Act was no new duty imposed upon them for the first time, but that they had been obliged to perform similar duties for many years past. With reference to the remark made by the Hon'ble Mover of the amendment that these criminal tribes had no fixed place of residence, and that therefore it would be impossible for the owners of land in any particular village to give the information required by section 21 to the Police, he would observe that section 21 only came into operation after the report required by sections 2 and 3 of the Act had been submitted to the Government of India, and the measures proposed had received the sanction of the

Governor General in Council, and then applied only to the owners and occupiers of land in villages where the criminal tribes, regarding which the report was submitted, might have been directed to reside; so that the difficulties anticipated by the Hon'ble Rájá Nárendra Krishna consequent on the migratory character of these tribes, would not be felt by the landowners who were required to give information regarding them.

He would for these reasons vote against the amendment; but he would submit, for the consideration of the Council, that the objection urged by the Hon'ble Rájá Nárendra Krishna against the section as it stood, namely, that it was hard to impose these duties upon non-resident landholders, might be removed by the insertion in that section of the words "or the agent of any such owner or occupier." These words were inserted in section 90 of Act X of 1872 to meet a similar objection to the section as first drafted. If these words were added, the responsibility of resident landholders, and of their agents in case of their absence, would be maintained, and that he thought was all that was wanted.

The Hon'ble Mr. Bayley wished to add a few words to what his hon'ble friend Mr. Inglis had just stated. He thought that, as regards the history of the law in its present condition, Mr Inglis had said almost everything that was to be said. He would only draw attention to a few qualifying words in section 21, which were in themselves, he thought, sufficient to meet the objections made by the hon'ble mover of the amendment; that was to say, to the words by which owners and occupiers of land were only required to give such information as was in their power. Now he thought that nobody could reasonably suppose that a Magistrate, however crass or stupid he might be, would think that a man, a hundred miles off, could have special knowledge, or be able to have such knowledge, of an offence committed on his estate. Mr. Bayley could not say that he had any objection to the amendment proposed by his hon'ble friend Mr. Inglis, because it brought this particular law into exact harmony with the wording of the general law of the Criminal Procedure Code. But he must say this, that he could not see that the fact of a man being absent entirely absolved him from all responsibility in regard to his property. It seemed to him that there were influences and responsibilities connected with landed property, and which always must be connected with it, which every man must and ought to exercise and to bear in the villages within his estates. The mere fact of systematic absenteeism was, he thought, a very serious political evil, and one which nothing should be done to encourage. Of course, if the responsibility was imposed on the agent of the

absentee landlord, practically the pecuniary part of it would fall on the absentee himself, and therefore to a certain extent the fact of his absenteeism would not enable him entirely to escape the duties he was bound to perform; indeed, in this sense, Mr. Inglis's amendment was an improvement on the Bill He believed the bulk of the larger zamíndárs in Bengal were men who would fulfil the duties imposed upon them by the general law without the stimulus of punishment. But he was bound to say that he had known, and he could point to the public records of the Government to show, instances in which in other parts of India zamíndárs of large influence and power and property had been actually convicted of systematically harbouring the very criminal tribes which were dealt with by this law. He thought, therefore, that so far as regards the amendment which had been proposed by Rájá Nárendra Krishna, there was no sound reason why it should be passed; but at the same time he for one was quite ready to accept his hon'ble friend Mr. Inglis' amendment.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA observed that, by the existing law of the country, zamíndárs were not allowed to summon their ryots to their kachahrís, and consequently they had not the same power over their ryots as they had before, and could not exercise the same influence in their estates as they did in former days.

His Honour THE LIEUTENANT-GOVERNOR merely had to remark that he was entirely opposed to the amendment as put by his hon'ble friend Rájá Nárendra Krishna, but that he quite accepted the revised amendment moved by the Hon'ble Mr. Inglis. He would recommend that the precise wording of the Criminal Procedure Code be adopted in the present Bill. The Criminal Procedure Code was passed subsequently to the Criminal Tribes Act, and the improved wording of the Code might be very well incorporated into the Bill before the Council. And he thought Rájá Nárendra Krishna ought to be content with it. His hon'ble friend laid great stress upon the difficulty which absentee landlords might have in giving information. Now he must remind his hon'ble friend that the remarks which had just fallen from the Hon'ble Mr. Bayley did still describe the duties and obligations of zamíndárs in Bengal. It might be that, as Rájá Nárendra Krishna stated, zamíndárs had not quite the power they once had, but they still had a great deal of legitimate influence, and not only influence, but the means of obtaining information; either they or their agents. If there was any zamíndár who was absent from his estates, he certainly was bound to have a responsible manager on the spot, from whom information could be obtained; and HIS HONOUR could not see that any zamíndár, who cared for his estate and managed it as well as his hon'ble friend managed

his own estate, could possibly object to his agent being responsible to give information of the coming and departure of the members of these criminal tribes.

But he would desire to remind the Council that the zamíndárs in Bengal as a class were not absentees. There were some gentlemen who resided in the capital, no doubt greatly for the general good of the community; but the great majority of them did still dwell in or near their estates, or at all events in the interior of the country, and were quite well able to afford all the local information needed in order to keep these tribes in order. And he need hardly do more than corroborate most distinctly on behalf of the Bengal Government what was stated by his hon'ble friend Mr. Inglis, that this obligation was nothing more than an integral part of the original obligations which rested upon all zamíndárs in the country—obligations which were not only common to zamíndárs in Bengal, but common to landholders in all parts of the country. It seemed to him that the substance of the amendment moved by Rájá Nárendra Krishna was this, that whereas zamíndárs were by the common law of the country required to give information to the Police of all bad characters, thieves and escaped offenders, in fact of every kind of bad character, yet there should be some exception to this general obligation with reference to these criminal tribes, that was to say, that the zamíndár was bound to give information of every kind of bad character, except the members of these criminal tribes. That seemed to him a *reductio ad absurdum.* So His Honour hoped the Council would be pleased to affirm those obligations as to these criminal tribes, and declare, as urged by his hon'ble friend Mr. Inglis, that without the co-operation of the owners and occupiers of land, it would be impossible to keep these offenders in order. The Hon'ble Rájá seemed to consider that the Police were sufficiently strong in Bengal to check these persons without the assistance of the landholders. Now, without any disparagement to the Police, His Honour maintained that they were not strong enough in such a vast area and amongst so great a population to keep all these criminal wanderers in order without the co-operation of the people who lived in these villages.

So with these observations, he would press upon the Council to reject the amendment proposed by Rájá Nárendra Krishna, and to accept the revised amendment proposed by his hon'ble friend Mr. Inglis.

The Hon'ble Mr. Cockerell said that, having only just joined the Council, he had not, before coming into that room, any opportunity of becoming aware of the intention of his hon'ble friend Rájá Nárendra Krishna to move such an amendment as that now before the Council; and he

could not help expressing his surprise at the theory propounded by the Hon'ble Member's motion, namely, that the principle by which the proposed legislation would impose certain responsibilities upon the owners or occupiers of land in the matter of giving information to the police, regarding the resort of professional criminals within the limits of such land, was a new principle. It was almost unnecessary to add that this was a wholly erroneous theory. The fact that it was so had been clearly established by the citation of the various enactments of the past three-quarters of a century by the Hon'ble Member opposite (Mr. Inglis).

Then as to the modifications of the amendment suggested by that Hon'ble Member to meet the apprehensions expressed by the Mover of it in its present shape, he (Mr. Cockerell) would not say that there was any positive objection to them, but he would prefer dispensing with them altogether; for he must say that he leaned completely towards the view expressed in the remarks of another Hon'ble Member (Mr. Bayley) that the absenteeism of any considerable section of the landed proprietary body was an evil which, at all events, we should in no way encourage by special distinctions in our legislation in the matter of the duties and responsibilities attaching to their position. Moreover, in such cases as the present, the proposed distinction would be merely nominal; this would be evident upon an examination of the manner in which this particular provision of the law would be likely to operate, for in practice a Magistrate would regard the omission to report the advent of criminal tribes within the limits of any estate as an act of negligence which would be suitably punished by a fine. The Hon'ble Mover of the amendment, he (Mr. Cockerell) was sure, would not dispute the assertion that in such case the fine would not fall upon the local agent or manager as a personal loss, but would be charged in the zamíndárí account and treated wholly as an item of expenditure incurred on account of the estate and to be met from its assets.

Then, again, it must be remembered that zamíndárs had considerable duties and responsibilities imposed by the law and the conditions of the settlement in regard to land-revenue, and they were bound to discharge certain functions in connection therewith. In regard to these matters there was no distinction between resident and non-resident proprietors; all were responsible alike. The Collector looked to the registered proprietor of the land and addressed his "parwána" or precept to him, enjoining the fulfilment of his legal obligations. As a matter of fact, in the case of the absentee landowner, his local agent habitually represented him, by receiving the communications addressed to his principal and acting up to them; but the theory of the principal's respon-

sibility was always maintained, and the conditions attaching to that position strictly enforced.

For these reasons, he (MR. COCKERELL) would reject the amendment *in toto*, as he considered that the proposed modifications would, in practice, be found unnecessary.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA observed that, in addition to the fine, the Magistrate could, under the law, inflict a month's imprisonment, so that his hon'ble friend Mr. Cockerell was not right in supposing that the Magistrate could only inflict a fine.

His Excellency THE PRESIDENT said :—"As far as I understand this question, the desire of Rájá Nárendra Krishna was to exempt an owner of land, who was not resident on his property, from any personal liability for not giving information in these cases. The amendment of the Hon'ble Member goes further than that, because it exempts all owners and occupiers of land, whether resident or not, from the obligation, which was doubtless not his intention. It seems to me, then, that this reason is conclusive against making an exception in the terms proposed by the Hon'ble Member, and that the proposal made by my hon'ble friend Mr. Inglis is the right one, namely, that the provision contained in the Code of Criminal Procedure laying upon owners and occupiers of land the responsibility of giving certain information should be applied to this case. Mr Inglis proposes to add after the words 'owner or occupier of land,' the words 'or the agent of any such owner or occupier.'

"I think the Hon'ble Member will see that that amendment will sufficiently meet the case."

The further consideration of the Report was postponed.

DRAMATIC PERFORMANCES BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill for the better control of dramatic performances. He said :—"This subject, the subject of stage plays, is one on which our law stands in need of amendment. If, indeed, a play is of a defamatory, an obscene, or a seditious character, those who exhibit it may be punished for the offence of defamation, obscenity or sedition. But the Government have been advised that they have no power to prevent the performance of any such play, unless, indeed, in the very rare instances in which it could be said that it was so certain to lead to a breach of the peace as to constitute the actors and audience an unlawful assembly.

"This imperfection of our law has been brought pointedly under our attention by some cases which have recently happened, and of which I will mention two. In the course of last year there was composed a work in a dramatic form, called the *Chá-ka-Darpan*, which I am told means The Mirror of Tea. I do not know who was the author, or what his motives were, but the work itself was as gross a calumny as it is possible to conceive. The object was to exhibit as monsters of iniquity the tea planters and those who are engaged in promoting emigration to the tea districts,—bodies of men as well conducted as any in the empire. These gentlemen, who are carrying on their business to the benefit of everybody concerned, and perhaps with a greater proportion of benefit to the labourers they employ than to anybody else, have what is called a Mirror held up to them in which the gratification of vile passions, cruelty, avarice and lust, is represented as their ordinary occupation. I do not know that this play was ever acted, but it is written, and in all respects adapted, for the stage, and it might, for any power of prevention the Government have, be acted at any moment.

"Another case has happened more recently. A highly respectable Hindú gentleman, of good position in society, one of the legal advisers of Government, and one of the legislature of Bengal, gave an entertainment at his house which some of his caste-fellows disapproved of. What he did was perfectly lawful, perfectly innocent, perfectly honourable, but some of his neighbours did not like it. So in order to punish him, they got up a play in which, in the coarsest way, and under the thinnest disguise of name and place, the gentleman is represented as deliberately selling his own honour and that of his family in order to get promotion and money.

"Now men are free to choose their own company, and they have a right to withdraw from the society of any one who infringes any rule, however absurd, which they may lay down; but they have no right to spread falsehood and calumny for the purpose of inflicting pain upon him. Yet this play was publicly acted, an honourable gentleman was held up to the scorn of the ignorant multitude as one of the basest of mankind, and though the acts might be punishable when done, the Government had no direct legal power of stepping in to prevent it.

"It was on account of the defect in the law that His Excellency the Viceroy thought it right to issue an Ordinance giving power to the Government of Bengal to prohibit objectionable performances of this kind. And it is a Bill on the model of that Ordinance which I am now asking leave to introduce.

"Now in all times and countries, the drama has been found to be one of the strongest stimulants that can be applied to the passions of men—

"'Segnius irritant animos demissa per aures
Quam quæ sunt oculis subjecta fidelibus.'"

said an acute man of the world who knew human nature well. The same philosopher tells us that no feat seems to him to be too difficult for the dramatist, who can produce any effect and illusion that he pleases on the mind of the spectators:

"'Irritat, mulcet, falsis terroribus implet,
Excitat, et modo me Thebis, modo ponit Athenis.'"

'Seeing is believing' says our proverb. Certain it is that we accept conduct and language on the stage which if we read the same things in a book, we should at once reject as false, absurd and incredible; so powerful is the effect produced by the actual living representation before our eyes. And in times of excitement no surer mode has been found of directing public feeling against an individual, a class, or a Government than to bring them on the stage in an odious light. It is doubtless for these reasons that the laws of civilized countries give to their Governments great controlling power over the stage. I will not trouble the Council with the laws of other countries, indeed I have not sufficiently studied them, but I will state briefly what is the law of England. By that law, it is not lawful for any person to have or to keep any house or other place of public resort for the public performance of stage-plays without the authority either of Royal Letters Patent or of the Lord Chamberlain's license, or of a license given by Justices of the Peace.

"Then there are rules requiring licensees to give bonds for good conduct, and there are powers given to the Lord Chamberlain and to the Justices to suspend licenses and to shut up theatres.

"The most stringent rule of all is the one which gives to the Lord Chamberlain complete control over the stage. First, it is required that a copy of every new play or alteration in a play shall, seven days before it is acted, be sent to the Lord Chamberlain, who has absolute discretion to allow or disallow its performance. Secondly, the Lord Chamberlain is empowered to forbid the acting of any play, even though already put upon the stage, 'whenever he shall be of opinion that it is fitting for the preservation of good manners, decorum, or of the public peace so to do.'

"The Council will see how very sweeping and overshadowing a law is thought necessary in England, in order to preserve a due control over this subject. We shall not propose to take such large powers as those which are vested in the Lord Chamberlain, but shall propose to take what will probably be quite effective in this country. If, however, my present motion is accepted, I will explain the precise nature of the Bill when I introduce it. The question now is, whether I have assigned to the Council sufficient reason for placing in the hands of Government a larger control over dramatic performances than Government now has. I trust they will be of opinion that I have done so."

The Motion was put and agreed to.

INDIAN MUSEUM BILL.

The Hon'ble Mr. Bayley introduced the Bill to provide for the management of the Public Museum at Calcutta, and moved that it be referred to a Select Committee with instructions to report in a week. He obtained, at the last sitting of the Council, leave to introduce the Bill, and he then explained that the principal reason for which he asked that leave was, that the Government had entered into an arrangement with the Asiatic Society by which that body should surrender their right, under Act XVII of 1866, to special accommodation in the building which had been provided for the Imperial Museum at Calcutta, in consideration of a sum of money paid to them. And he said also that the opportunity was taken of re-enacting Act XVII of 1866 with certain minor amendments. The Bill he had therefore now the honour to introduce repealed Act XVII of 1866, and re-enacted it with the following amendments. The provision securing to the Asiatic Society the possession of certain parts of the Museum building had been omitted, and certain minor provisions which the existence of that obligation entailed, such as to provide certain rooms for the Society, to provide for the repairs of the building and the incidence of the expense of these repairs, had been omitted. The remaining new provisions of the Bill were merely to remedy certain inconveniences which had been found in working the existing Act. The first of these was in regard to the number of Trustees. The present number was thirteen; but it had been found very difficult, in consequence of a considerable portion of them being necessarily hard-worked officials, always to get a quorum at meetings of the Trustees, to transact business. It was proposed therefore slightly to raise the number of Trustees, namely, from thirteen to sixteen, and to give the appointment of these Trustees in exactly the same proportion as formerly was given to the Government and the Council of the Asiatic Society, and to secure the appointment of a

similarly increased proportion of official Trustees. Then, again, provision was made that no officer was to be appointed by the Trustees without the approval of the Governor General in Council, or of the Secretary of State for India in Council, and that no new office should be created or salary fixed without the previous sanction of the Government. And as regards salaries, pensions and leave rules, it was provided that the officers of the Museum should be subject to the rules applicable to the Uncovenanted Civil Service. These latter provisions of the Bill represented exactly what was the existing practice, to which it was found convenient to give legal sanction.

He did not think he need detain the Council with any further explanation of the provisions of the Bill. The Bill had been submitted to the criticisms of the Trustees of the Museum and of the Council of the Asiatic Society, and the different Departments of Government concerned, and it had been modified in accordance with their wishes. He therefore proposed to refer it to a Select Committee with instructions to report in a week, as he anticipated that very slight, if any, alterations would be found necessary in the Bill.

The Motion was put and agreed to.

PRESIDENCY BANKS BILL.

The Hon'ble SIR W. MUIR presented the Report of the Select Committee on the Bill for constituting and regulating the Banks of Bengal, Madras and Bombay. He said it would be expedient that he should allude briefly to the alterations made in Committee in the Bill. The communications received on the subject from various quarters had all been very carefully examined in Committee, with the advice and assistance of his Hon'ble friends the mercantile Members of Council, and conclusions which he believed to be satisfactory had been come to upon them.

The first important change (chapter VIII, section 37, clause (*d*)) related to the limit of Six hundred thousand rupees which had been placed on unsecured loans to any single person. In introducing the Bill, he had explained that this restriction had been imposed in conformity with suggestions made by the Bombay Commission. It had been, however, thought better, instead of laying down a hard and fast limit, to leave the amount to be fixed by the bye-laws which would be made by the directors subject to the confirmation of the Governor General in Council. Thus, the limit would be proportioned to the requirements of each Bank, which no doubt might differ largely; and the amount would also be capable of variation and adjustment from time to time according to the circumstances of the period. It would be admitted, he thought, that this was an important improvement.

Next, the scope of the Banks had been enlarged so as to enable them to advance on the securities of the United Kingdom of Great Britain and Ireland (chapter VIII, section 36, clause (2)). This might prove an important convenience to the Banks, and was certainly a safe extension of their business.

Thirdly, it was declared that the responsibility of proprietors was a limited responsibility (chapter II, section 4). The Committee, indeed, had no doubt that even under the previous drawing, the liability was already a limited one; but the point having been raised, it was thought proper, in order to give greater confidence to the proprietors, distinctly to declare the limitation.

Fourthly, referring to the continuance of the Agency of the Bank of Bengal at Bombay, and the possible establishment of other similar Agencies, it had been thought advisable to enact that these, if established, should be subject to similar restrictions as had been imposed on the Bombay Agency of the Bengal Bank (chapter VIII, section 42). The equity of such a provision was plain.

Fifthly, the disqualification for directorship attaching to banking business had been confined to the management of Joint-stock Banks (chapter VI, section 27, clause 2). The ordinary banking business done by houses of business was not deemed to be a disqualification; and, indeed, it had been represented from Madras that, unless this relaxation were made, it would be impossible at that Presidency to obtain a satisfactory and effective Board.

Sixthly, it had been strongly represented that directors should be protected in the *bonâ fide* discharge of their duties. The usual clause common in England for such purpose had therefore been added, indemnifying the directors against loss, except such as might happen from wilful act or default, and making them responsible only for their own several acts (chapter VI, section 31). This would give a satisfactory and reasonable confidence and security to the directors personally.

Lastly, the scale of votes to which shareholders were entitled had been revised (chapter XI, section 56). The subject was noticed when introducing the Bill, and it was then said that it might be proper to give greater weight to capital than at present. This had now been done, but on the other hand, the scale had also been taken lower. The minimum capital to secure a share was formerly Rs. 4,000; a capital of Rs. 2,000 would now carry a vote; Rs. 10,000 would carry two votes, and so on, every Rs. 10,000 giving a vote up to Rs. 50,000. Thereafter, Rs. 25,000 gave an additional vote up to Rs. 200,000, for which the proprietor was entitled to the maximum of twelve votes (chapter XI, section 56). This scale appeared to be equitable, and, it was hoped, would give general satisfaction.

No other points of importance needed notice. But it was proposed that the Bill be republished for general information, as it concerned a subject on which the public throughout the three Presidencies were interested, and on which it was proper that they should have the fullest information before the measure became law.

NATIVE COINAGE BILL.

The Hon'ble SIR W. MUIR also presented the Report of the Select Committee on the Bill to enable the Government of India to declare certain coins of Native States to be a legal tender in British India.

OPIUM BILL.

The Hon'ble SIR W. MUIR asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the law relating to opium. A letter had been received from Bombay on the subject, and the Select Committee wished to re-examine the Bill in the light of its comments before finally presenting their report.

Leave was granted.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. HOPE presented the final Report of the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue, and for other purposes.

SUNDRY BILLS.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Mr. Cockerell be added to the Select Committees on the following Bills :

To consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

To consolidate and define the law relating to land-revenue in Oudh.

To declare and amend the laws to be administered in Oudh.

To amend the law relating to Civil Appeals in the Lower Provinces of the Presidency of Fort William.

To amend the law relating to Merchant Seamen.

To define and amend the law relating to certain kinds of Specific Relief.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to provide for the management of the Public Museum at Calcutta——The Hon'ble Mr. Hobhouse, Sir A. J. Arbuthnot, and the Mover.

The Council then adjourned to Tuesday, the 21st March 1876.

CALCUTTA,
The 14th March 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department.

Government Central Press.—No. 489 L. D.—24-3-76.—250.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 21st March 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q.C.
The Hon'ble E. C. Bayley, C.S.I.
The Hon'ble Sir W. Muir, K.C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
The Hon'ble John Inglis, C.S.I.
The Hon'ble T. C. Hope.
The Hon'ble D. Cowie.
The Hon'ble Rájá Nárendra Krishna Bahádur.
The Hon'ble F. R. Cockerell.

CRIMINAL TRIBES ACT EXTENSION BILL.

His Honour THE LIEUTENANT-GOVERNOR moved that the Bill to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal, be passed. He said, it would be in the recollection of the Council that the Report of the Select Committee on this Bill was presented at the last meeting; that a certain amendment was proposed and passed on the subject on that occasion; and that the passing of the Bill was postponed until to-day, in order that the amendment agreed to at the last meeting might be put into due form. The amendment accordingly had been framed, and nothing now remained, he believed, than to pass the Bill as amended at the last meeting. With these remarks he had to ask that the Bill be passed according to the motion set out in his name.

The Hon'ble MR. INGLIS said that on Tuesday last the Council decided that certain words should be inserted in section 21 of the Act, indicating that,

in the case of non-resident landowners, the duty of giving information to the Police devolved upon the agents employed by such landowners in the management of the estate where a criminal tribe that had been brought under the provisions of the Act resided. This amendment rendered necessary a few other alterations in other sections of the Act. These were entered in the list before the Council. The two last amendments related to a totally different matter, and he would, with the permission of the Council, ask leave to withdraw them, as, on consideration, he hardly thought them necessary. He therefore confined his motion to those alterations only which were rendered necessary by the resolution adopted at the last meeting. They were :—

That the following words be added to the title (namely), "*and to amend the same Act.*"

That the following words be inserted in the preamble after "Bengal" (namely), "and to amend the same Act in manner hereinafter appearing."

That the following section be added to the Bill (namely),—

"2. Section eighteen of the said Act shall be read as if in the second clause, after the words 'persons reside,' the following words were inserted (namely), 'or the agents of such landowners or occupiers.'

"Section twenty-one of the said Act shall be read as if in the first clause, after the words 'persons reside,' the following words were inserted (namely), 'or of the agent of any such owner or occupier,'

"and as if in the fourth clause, after the words 'occupier of land,' the following words were inserted (namely), 'or of the agent of such owner or occupier.'

"And section twenty-two of the same Act shall be read as if, after the words 'occupier of land,' the following words were inserted (namely), 'or the agent of such owner or occupier'."

The Motion was put and agreed to.

The Motion that the Bill be passed was carried.

DRAMATIC PERFORMANCES BILL.

The Hon'ble Mr. Hobhouse introduced the Bill for the better control of dramatic performances, and moved that it be referred to a Select Committee with instructions to report in two months. He said that he gave to the Council last week the reasons for passing a measure on this subject. He had now to explain the nature of the Bill which he proposed. What was proposed was that whenever the Government was of opinion that any dramatic performance was scandalous or defamatory, or likely to excite feelings of disaffection to the Government, or likely to deprave and corrupt the persons present at the performance, or to be in other way prejudicial to the interest of the

public, the Government might prohibit the performance. The copy of the Bill in his hands spoke only of the Local Government. It was intended, however, to give this power to the Governor General in Council as well as to the Local Government. The Bill provided that a copy of the order might be served on the persons about to take part in the performance or on the owner or occupier of the house or place in which it was to take place; and then penalties were imposed for disobedience to the order, and power was given to the Magistrate to seize the scenery, dresses and other articles which were used in the play which was prohibited.

So far the Bill only gave power to prohibit such dramatic performances as the Government had reason to think objectionable. In section 9, we proposed to take further power in particular cases in which the Government might have reason to believe that it was necessary to put particular local areas under further control. And the powers conferred by section 9 were nearly the same as those which, as he explained to the Council on the last occasion, the Lord Chamberlain had in England. It was proposed that, after notification in the particular place, no dramatic performance should take place except in some licensed house; that those about to perform should be bound to give prior notice to the Government, who might then prohibit the performance if they thought fit. The Council would see that we did not establish necessarily any kind of censorship; that the Government would, in the first instance generally depend on the information it might receive as to the nature of the piece to be performed. If it found that the law was evaded: if it found that in a given place, persons continued to exhibit objectionable performances secretly or suddenly, it might then apply to that particular place in which such things were done the more stringent provisions of the law, which would compel them to take out licenses and to give notice of what they were about to do.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA said the Bill introduced by the Hon'ble Mr. Hobhouse to-day, was a measure which could not fail to check a reprehensible tendency in some of our young misguided authors, who abused their imaginative powers in writing objectionable plays for the stage. No members of a nation that aspired to be reckoned as a civilized race should indulge in personalities, scandal and obscene exhibitions, in order to satisfy their spite or vent their fury on people who did not act according to their standard of propriety, or to excite impure merriment. This Bill very properly proposed to stop the enactment of seditious and obscene representations in theatres. But while he recognised the necessity of such a measure, he would fail in his duty if he did not point out to His Excellency how difficult was the censorship to

be exercised in these matters, especially when these dramas were written in a language foreign to our rulers. He would, therefore, suggest that due attention should be directed in the Select Committee for the selection of persons who would be required to pronounce an opinion as to the objectionableness of a play under the proposed enactment.

The Motion was put and agreed to.

INDIAN MUSEUM BILL.

The Hon'ble MR. BAYLEY presented the Report of the Select Committee on the Bill to provide for the management of the Public Museum at Calcutta. The Committee, he said, had made no changes in the Bill.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. HOPE moved that the Reports of the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue, be taken into consideration; and in doing so, he would touch very briefly upon the more material changes which the Select Committee had now made in the Bill as previously laid before the Council. In their last report, paragraph 2, they had said with reference to the second paragraph of clause (*c*), section 4, that the "provisions regarding claims to set aside sales for arrears of land-revenue have been framed on the understanding that the Land-Revenue Code Bill, now pending in the local legislature, which contains safeguards against improper sales, will become law." This Bombay Revenue Code was still before the local legislature, and it was not easy to say when such a large measure was likely to be passed into law. Therefore, the Committee had thought it better to insert in the first section of the Bill a proviso, to the effect that so much of section 4 as related to claims to set aside, on the ground of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue, should come into force on such day as the Governor-General in Council directed in that behalf. For his own part, MR. HOPE confessed that he thought this precaution was somewhat unnecessary, and that it arose from the erroneous supposition that the present Bombay law did not provide sufficient safeguards for the recovery of revenue. But the new Code would be no material amendment in that respect; the present law, as far as he was able to see, and as it had been administered by him for a series of years, was perfectly good and sufficient. And if it was thought that it was not sufficiently clear for the use of some of the inferior establishments, it would be very easy for the Bombay Government at once to issue an executive circular of explanation on the

subject. However, the matter was not of very great importance either way, and the provision the Committee had inserted had at any rate the recommendation of erring on the side of precaution.

The next change which had been made was that of striking out the clause (*b*) which was in the first section and which had reference to sites (under the provisions of sections 5 and 6 of the Bombay Act IV of 1868) of towns and cities. MR. HOPE had pointed out at the time that this proviso was in reality quite superfluous, since exactly the same object was already attained by the greater proviso in section 4 itself; and on further consideration the Committee had struck it out altogether on these grounds.

The Committee had also made a material alteration as regards the date from which the Bill was to have effect. Previously it was provided that the Bill should have effect upon all suits which had been filed after the 7th August 1873. Probably, when this date was inserted in the Bill, it was expected that the Bill would very soon become law, and that it would be necessary to bar a flood of suits which might be filed during the interval devoted to the passing of the Act. But as it had happened, they had been assured by the Bombay Government that there had been no such great flood of suits. They had been assured that the number of these suits had been very insignificant, and therefore they had made the material alteration of admitting the whole of such suits which had been presented to the Civil Courts, and only making the Act take effect from the passing of it. The next change he had to point out was that, in order to make it perfectly clear that the Bill applied to all lands and land-revenue, and to remove doubts raised in certain quarters as to the meaning of the word "land" in the Bombay Regulation XVII of 1827, the Committee had inserted in the interpretation-clause that land included the sites of villages, towns and cities. They had also, in section 17, added a declaration that so much of the Regulation as was for the time being in force in any part of the territories to which this Act extended should be deemed to have been in force, and to have always been in force, in the sites of villages, towns and cities in such parts. This was in accordance with the actual interpretation of the law since 1827, and with the continuous practice ever since these sites passed under British rule; so that, he apprehended, there could be no objection to a more specific definition of land as it in reality existed. They had also improved the definition of "land-revenue" and "revenue-officer," because it had been pointed out that the wording which had been previously adopted might, under some circumstances, include objects which were not strictly of the nature of land-revenue; that was to say, advances made under the Land Improvement Act, and such

other things which were not of the nature of revenue demands, but rather of the nature of loans, and therefore might properly remain within the jurisdiction of the Civil Courts.

There was only one other point on which he need trouble the Council by noticing. It was stated in the report that "we have empowered the Governor General in Council and also the Local Government to refer, for the decision of the High Court, questions arising in trials and investigations which, but for the proposed Act, might have been dealt with by a Civil Court; and we have required the case to be disposed of conformably to such decision." He was obliged to say that he was unable altogether to approve of this section, or the form in which it had been drafted, inasmuch as it allowed a reference of any question to the Civil Courts. A suggestion for a provision of this sort had come in somewhat general terms from a high quarter, and MR. HOPE thought that if it had been worked out from the model of section 204 of Act XVIII of 1873 (the North-Western Provinces Rent Act), which permitted the Collector to refer cases relating to questions of law to Civil Courts, it would have been altogether unobjectionable and exceedingly desirable, and also consistent with the line which had been drawn in this Bill in the proviso and other parts of section 4, which had been fully explained in their last Report. The section, as now drafted, allowed the reference of any question to the Civil Court; it left the Local Government without any indication of what was the intention of the legislature as to what class of cases it was contemplated might be referred to the Civil Courts. It would therefore be open to the Local Government either to leave it entirely a dead letter, or so to work it as to make the whole rest of the Act a dead letter. However, as the other members of the Select Committee did not agree with him on this point, he had signed the report, but had just mentioned to the Council the actual difficulty which occurred to him. Any remarks which it might appear necessary to make upon the policy of the measure, as a whole, and the desirability of its being passed, he proposed to defer until the motion that the Bill be passed came before the Council on a future day.

The Hon'ble MR. HOBHOUSE said he was not going to make any observations now about the main principles of this measure, because they would be more appropriate when the motion was made for the Bill to be passed. But he had one or two observations to make on the details which arose upon the Report of the Select Committee. The Council would see that in their last Report in October 1875, the Select Committee introduced very large modifications in the Bill: the present Report altered it very little, only in matters of detail, none of which appeared to him to affect the principle of the Bill.

With regard to the postponement of the operation of the clause marked section 4, clause (*c*), the Committee did not entertain any doubt that sales were conducted in the Presidency of Bombay with care and with judgment. At the same time when you came to shut people out from taking the opinion of the Civil Court on the validity of a sale, the Committee thought it necessary to provide in the law itself for certain methods of procedure—certain formalities which, however they might be provided for now by executive order, were not provided for by positive law. It was so done when a similar Act was passed for the North-Western Provinces. Simultaneously with a provision which prohibited the Civil Courts from interfering in these matters, provisions were enacted which established a more formal and regular procedure by the Revenue officers.

With regard to pending suits, he could confirm what was said by the Hon'ble Mr. Hope. The Bill originally provided that it should apply to all suits which might be instituted after it was introduced. It was then expected that there would be a great number of suits filed in consequence of the introduction of this measure, and he believed that in Canara such was the case—he could not say positively that it was in consequence of the introduction of the measure, but the Canara litigation was one of those phœnomena which led to the introduction of the measure. When the Bill was introduced, the Government were told that there were six hundred suits filed in Canara against the Government, and the number had since increased to about one thousand. The extra four hundred must, he supposed, have been instituted after the Bill was introduced. In point of substance, these suits had been disposed of by the decision of one of them; for they all depended upon one principle, which was decided against the plaintiffs. If the judgment had gone differently, if it had gone against the Government, there would have been required one thousand distinct decisions, a thousand enquiries, a thousand accounts, and so forth; however judgment had been given in favour of the Government, and so the whole of these thousand suits had been practically disposed of by the decision on one single plaint. We were then not afraid of the amount of suits instituted between the date of the introduction of the Bill and the present time. Moreover the Bill had been pending much longer than was expected, and it would be a harsh measure to tell a person, who had instituted his suit two years ago, and who had prosecuted it up to this moment, and perhaps had very nearly got a decree, that his suit was barred, and that his cost and labour went for nothing. The Committee had therefore made the Act apply only to suits instituted after the passing of the Act, believing that in doing so, they should not do the Government or the revenue any material harm, thinking that this amount of consideration to the suitor was reasonable.

With respect to the definition of the word "land" a great deal of objection had been raised. We had been told that it was a sweeping and enormous definition; that it was impossible to conceive anything which should not fall within the definition. The Committee, however, had thought fit to retain the definition, with the one alteration referred to by his hon'ble friend. The fact was that there was nothing in the definition which would not flow naturally from the use of the word "land," properly construed. He himself, speaking as a lawyer, wished the definition to be wholly omitted, not as being wrong, but as being superfluous. But he was told—as he had often been told before in similar cases—that it was better to leave in these words; that the Act was to be construed by a number of persons who were not very familiar even with the English language, and who were not at all familiar with English legal language. This definition included nothing which was not included in the definition of "immoveable property" in the General Clauses Act; therefore, it was the general meaning of the words "immoveable property" and it was also the general meaning of the word "land." He did not think the definition in this Bill extended the meaning of the word one jot or tittle beyond what it extended of its own force. He was indeed informed that some difficulty had arisen in the Presidency as regards sites of villages, towns and cities. How that difficulty had arisen, he did not know. But how any one could conceive that the word "land" did not of its own force include the sites of villages, he could not imagine. Every Revenue officer for the last fifty years had acted on the supposition that land meant land, whether it was the site of a village or not, and if there were doubts as to the validity of their proceedings, it was better to allay them. To that extent, the Committee had extended the definition, but they had not proposed to contract it as had been suggested to them.

With respect to the definition of the term "land-revenue," the Committee had made an alteration (section 5, clause *(f)*) which excluded suits to set aside cesses or rates. The Bill had described these as "any cess or rate authorized by the Government." It was objected that the clause might empower the Government to impose a cess or rate without any authority whatever, and the Civil Courts would not be able to interfere. Of course such a thing never was intended for one moment: the possibility of the Government acting wholly without the warrant of law was not contemplated. But in order to meet the objection that had been taken, the Committee had provided that the cess or rate must be authorized by the Government under the provisions of any law for the time being in force.

The only other point in the Report which he considered it necessary to notice was that which related to what were now sections 12 and 14 of the Bill. These were the sections which enabled the Government to refer any question that they thought proper for the decision of the High Court. Now, although it might be very proper to remove whole classes of cases from the cognizance of the Civil Courts, yet it seemed to him that there was no case in the world in which there might not arise some question which those who had to decide the case might prefer to have decided by the more rigid methods of a Civil Court. These sections therefore left a safety-valve in such cases, and whenever the executive Government thought that they had got a case on which they would prefer the decision of the Civil Court, they were empowered to take it. The principle of such a provision was not an uncommon one. It was known in England, and when particular subjects were committed to the jurisdiction of Commissioners, not being a Court of law, it was sometimes provided that if in their discretion they desired to have a judicial decision on a particular point, they might refer the case for the purpose to some particular Court or other, such as the Court of Chancery, the Judicial Committee of the Privy Council, or any other Court which might be named. The Committee had imported that provision into the Bill, and they were exceedingly sorry that they could not carry the judgment of Mr. Hope with them. But as it was, the provision seemed to the rest of the Committee desirable, and not in any way to contravene the broad principles of the Bill in those cases which affected the incidence, the amount, or the assessment of the revenue. Such cases, except in certain instances, were still generally withdrawn from the cognizance of the Civil Courts, but the assistance of the highest of those Courts might be obtained when wanted.

Those were the only points on which he wished to make any observations, and he hoped the Council would accept the recommendations of the Select Committee.

His Excellency THE PRESIDENT said :—"The Council are very much indebted to the Hon'ble Members who have served from time to time upon the Select Committees to which this Bill has been referred. The Bill has now been before the Legislative Council for nearly two years and a half, and the Government of India both in its executive capacity, and also meeting, as we now do, in Legislative Council, has considered with the greatest possible care and attention the objections which have from time to time been raised against the provisions of this Bill. All those doubts and objections which the Government and the Select Committees considered worthy of attention have now been

met; and whatever may be the opinions of some people upon the provisions of the measure, this I think we may say—that no Bill has ever received more careful and patient consideration. I may add that I believe that in the whole of India there will not be found men more capable of giving a sound opinion upon the matters contained in this Bill than the Members of the Select Committee. Mr. Hope who, from his own personal knowledge of the subjects dealt with by the Bill, has been able to render most valuable assistance. We have had on the Committee the assistance of Sir William Muir, whose knowledge of land-revenue in the North-Western Provinces is so well known, and Sir Alexander Arbuthnot, who is a high authority on questions relating to the land-revenue in Madras. Mr. Bayley, who has had large experience upon the same subject, has also afforded valuable assistance to the Committee. No man, to my personal knowledge, could have devoted more careful and continuous attention to any measure of importance, such as this undoubtedly is, than my hon'ble friend Mr. Hobhouse has to this measure. Therefore, I believe that the Council will do well to accept the amendments proposed by the Select Committee in the Report now presented, reserving any discussion which Hon'ble Members may wish to raise upon the principle of the Bill till this day week, when it is proposed that it should be passed into law."

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble Mr. Hobhouse moved that the Hon'ble Mr. Inglis be added to the Select Committees on the following Bills:—

To declare and amend the laws to be administered in Oudh.

To regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency Towns.

To amend the law relating to Opium.

To amend the law relating to Merchant Seamen.

The Motion was put and agreed to.

PRESIDENCY MAGISTRATES AND OPIUM BILLS.

The Hon'ble Mr. Hobhouse also moved that the Hon'ble Mr. Cockerell be added to the Select Committees on the following Bills:—

To regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency Towns.

To amend the law relating to Opium.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for the better control of dramatic performances——The Hon'ble Mr. Inglis, the Hon'ble Rájá Nárendra Krishna and the Hon'ble Mr. Cockerell and the Mover.

The Council then adjourned to Tuesday, the 28th March 1876.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 21*st March* 1876.

Government Central Press.—No. 530 L. D.—31-3-76.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic, cap 67

The Council met at Government House on Tuesday, the 28th March 1876

PRESENT.

His Excellency the Viceroy and Governor General of India, G M S I, *presiding*

Major-General the Hon'ble Sir H W Norman, K C B

The Hon'ble A Hobhouse, Q C

The Hon'ble E C Bayley, C S I

The Hon'ble Sir W Muir, K C S I

The Hon'ble Sir A J Arbuthnot, K C S I

Colonel the Hon'ble Sir Andrew Clarke, R E, K C M G, C B

The Hon'ble John Inglis, C S I

The Hon ble T C Hope

The Hon'ble D Cowie

The Hon ble Raja Nárendra Krishna Bahádur

The Hon ble J R Bullen Smith, C S I

His Highness Mahárajá Iswaríparshád Náráyan Singh Bahádur, of Benares.

The Hon'ble F R Cockerell

NATIVE PASSENGER SHIPS BILL

The Hon'ble MR HOBHOUSE moved that the Reports of the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers, be taken into consideration He said that this matter had been before the Council some considerable time, and on one or two different occasions When they met last at Simla, he had explained to the Council the extreme complication of the present law, and that in point of fact the present law was found to be quite unworkable He had also mentioned that a Bombay gentleman, Mr Kittredge, who was very well acquainted with the business of passenger ships, had suggested a new principle on which the measure might be framed This principle had first been provisionally adopted, and they had communicated with the Local Governments on the subject, and, finding that the principle was a sound and workable one, they had determined on recommending it to the Council The Bill had been published, and nothing had occurred to make them wish to recede from the position taken up In fact,

all that had happened since the measure was last before the Council was that one or two small alterations had been made in details.

The principle that was adopted was to divide voyages, not according as ships were going east or west, nor into coasting voyages and others, but into short and long voyages. A long voyage was defined as one in the course of which a ship was fully five days out of port, and a short voyage included all other voyages. These, in fact, represented two different and distinct classes of business; one represented the passenger trade to the more distant countries, and the other represented the coasting voyages, which were, at the present moment, provided for under that not very intelligible name by a separate law. Then, a set of rules had been laid down applying to all voyages, another set of rules applying to short voyages, and another applying to long voyages; those applying to short voyages were less stringent than those applying to long ones; that was to say, in the case of long voyages more precautions were taken. These alterations in the principle of the Bill necessitated considerable alterations in the details. All these were set out in the Bill, as presented to the Council in September 1875, and in the Report of the Select Committee which was then presented. He would only now mention one or two of the larger details in the Bill.

They had endeavoured to consult the convenience of shipowners in respect of certificates and surveys. Complaints had been made that shipowners had been holding perfectly good and valid certificates for many purposes, but yet the law required them to take out fresh certificates before the commencement of a fresh voyage, and these fresh certificates sometimes entailed a needless survey, the cost of which in the first instance was borne by the shipowners, but of course must, as in all such cases, be borne ultimately by those who used the ships. Now they had divided certificates into two classes—the one relating to the more permanent qualities of a ship, and the other to the temporary incidents which affected ships. Such matters as the seaworthiness of the ship, her equipment, and capacity were the permanent elements of a ship, and it was proposed that they should be comprised in one certificate, which was called certificate A; and if a shipowner held a certificate of this sort from the Board of Trade or the Indian Government, not more than six months old, that would cover the particulars required by certificate A, and no new certificate would be required. The other temporary incidents were such things as the number of the crew, supplies of provisions, water, and so forth, which might vary with every voyage; and for these the Committee proposed a second certificate called certificate B, of which there must be a new one at the commence-

ment of every voyage. And in order to check recklessness in ordering surveys, at the expense of the owners, it was provided that, if the surveyors who conducted the survey reported that there was not, in their opinion, any good and substantial reason why the survey should have been ordered, the expense of such survey should be borne by the Local Government.

Another rather important alteration of the law was for the purpose of checking frauds which were committed in the passenger trade to India. For instance, they found that at Singapur a ship might put out of port with the number of passengers allowed by the law of Singapur; but after going ten miles out to sea, or after going to the coast of Sumatra, she might take in a larger number of passengers than was allowed by either the laws of Singapur or India, and convey them to an Indian port. At present the Indian law did not touch such an offence; it was an offence against the law of Singapur, and the moment the ship was three miles away from Singapur, she might laugh at that law. Now, as a general rule, it was not their business to interfere with the law of other countries, but this was a matter in which the interests of both countries were concerned, and they did not want that overcrowded vessels should enter Indian ports, and bring with them the risk of disease. They had therefore provided that if any ship entered an Indian port with an excess of passengers, more than was allowed by the Indian law, or more than was authorized by the license which the ship held from its port of departure, it should be deemed an offence committed against Indian law, and the captain should be punished accordingly.

He did not think there was necessity for him to draw the attention of the Council to any other matters, for all the other details were of a small kind, and he had no doubt the Council had satisfied themselves as to the propriety of this Bill in respect of these details.

The Motion was put and agreed to.

The Hon'ble Mr. Hobhouse also moved that the Bill as amended be passed. He had only to add that they were very much obliged to the gentleman who had been at some pains to assist them in this matter. Mr. Kittredge, whom he had previously named, had taken a great interest in it, and Messrs. Mackinnon, Mackenzie and Co., the agents of the British India Steam Navigation Company, who had taken much pains to submit the case from their point of view, and who, in pressing their own interest, had only done that to an extent which was perfectly reasonable, proper and in the interests of the public. Two of their late colleagues, Mr. Eden and Sir Douglas Forsyth, had also taken

great pains in framing the Bill, and they had held interviews with the Calcutta gentlemen engaged in the trade, and had enabled the Committee to adjust technical details with more confidence than would otherwise have been the case. He hoped that the Council would approve of the measure, and that it would be found to meet the requirements of the case.

The Motion was put and agreed to.

INDIAN MUSEUM BILL.

The Hon'ble MR. BAYLEY asked for leave to postpone the motion that the Report of the Select Committee on the Bill to provide for the management of the Public Museum at Calcutta, be taken into consideration.

Leave was granted.

NATIVE COINAGE BILL.

The Hon'ble SIR W. MUIR moved that the Report of the Select Committee on the Bill to enable the Government of India to declare certain coins of Native States to be a legal tender in British India, be taken into consideration. When he asked leave to introduce the Bill, he had explained its provisions fully, and they were also discussed at a subsequent meeting. It was found in Committee that it was necessary to make only a few alterations. They had changed the definition of "Native States" in accordance with certain expressions used in a treaty; and it was now explained to mean any Indian State which was under the protection or political control of Her Majesty, or of which the Government had acknowledged the supremacy of the British Crown. In sections 3 and 4 they had struck out the words "or issued by," so as to preclude the power to issue, under the proposed Act, coins manufactured in England or any place other than a mint of the Government of India; and to section 4, clause (*f*), they had added some words to make it clear that the coins declared by a Native State to be a legal tender, should be so only in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British India. Words had also been introduced empowering the Governor General in Council to impose on any metal sent for coinage, under the proposed Act, the duty leviable on the same metal under the Indian Coinage Act, 1870; in all such cases, compensation would be arranged for, in the engagement entered into with the Native States, as the equivalent of such duty.

The Motion was put and agreed to.

The Hon'ble SIR W. MUIR also moved that the Bill as amended be passed.

The Motion was put and agreed to.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. HOPE moved that the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue, as amended, be passed; and in doing so, he proposed to offer a few remarks upon the principle of the Bill, and the objections which had been raised against it. He had taken steps to have himself supplied officially with all the criticisms which had been offered upon the Bill in the public prints of the Bombay Presidency, both in English and the Vernacular, and to the best of his belief, he had received and had carefully perused all such criticisms. He did not propose to attempt to correct all the misrepresentations, or to answer all the vague declamations which had been scattered broadcast throughout the presidency upon the subject. But he would take up a few points of more or less importance which might be considered as typical of the style of criticism which the Bill had had to endure.

First, there was what he might call personal criticism which had been directed against himself, and there was case criticism which had been based upon certain civil suits which had been recently before the public in the Bombay Presidency. To criticism of these two descriptions, he did not propose to reply, because it appeared to him that whether an individual revenue officer had acted correctly or not in any particular case, or whether the Government happened to be successful, or the reverse, in any particular suit, was a matter altogether irrelevant to the great public measure now under consideration. It seemed to him to be the duty of the Government and the Council to consider any measure which might be brought before them on the broad and general grounds of public policy which its advocates affirmed necessitated it, and not to turn aside, or be influenced by any circumstances which might arise out of the conduct of individual persons, or the accidents of any particular case.

He would next point out that the scope of the Bill had been almost universally and in a most remarkable manner misrepresented or misunderstood. It had been stated over and over again that the object of the Bill was "to place all landowners in the Bombay Presidency at the mercy of zealous revenue officers." We were told that "all revenue suits would be barred" by it; that "the revenue officer will be the sole judge of the validity of a man's claim to any property," and so on. It was only necessary to mention such statements for their incorrectness to occur to every Member of the Council, and he need not recapitulate the details of the Bill in order to disprove them. It would be sufficient to state that so far from placing all landowners at the mercy of the

revenue officers, this Bill only affected certain owners of land, and so far from placing them all at the mercy of revenue officers, it would admit a large section of them to the privilege of resorting to the Civil Courts which they did not now possess. Similarly with regard to property, it would allow suits in the Civil Courts in respect of property in the new provinces which were hitherto not permissible, provided the claim rested on any one of a large class of proofs.

He also observed that a very ingenious attempt had been made to assert that in point of fact, the new provinces of the Bombay Presidency were legally and practically in the same position as the old ones; and that all which had been said to the contrary in the discussions upon the subject was simply so much nonsense, and was merely calculated to blind the eyes of those who did not know any better. In proof of this ingenious assertion, the two great cases of exemption and assessment had been taken. Regarding exemptions, it had been contended that this was so because by the Inám Act, and the Summary Settlement Act, II of 1863, a large portion of the *inám* or alienated lands had been settled, and consequently, the Civil Courts had now returned to their full jurisdiction over inám lands; and in support of this a case decided by the High Court was quoted. This was absolutely irrelevant. It had never been contended that when a claim to exemption had once been adjudicated on or disposed of by the revenue officers under those Acts, those officers would have any further power to interfere with the property. By the old law even such adjudicated property became just like any other private property, and ceased to possess any special character; and according to the old law that judgment was very properly passed Under the present Bill, the law would still remain the same. If it were said that practically the whole of these inám cases in the new provinces had been decided, and therefore this Bill affected nothing, then it might be replied that, under the operation of the similar Act, VII of 1863, the whole of the inám cases in the old provinces must have been decided too, and there was no necessity to make the outcry about the Bill which was being made. As a matter of fact, however, what the Bill did touch was the residue of all this class of cases, and similar cases which must from time to time arise in the course of settlement both in the new and in the old provinces. With reference to the point of assessment, on the other hand, it was simply stated that it was now unnecessary to reserve to Government any special powers relating to assessment, because the revenue assessments over the whole of the new provinces had been completed. This statement entirely ignored the fact that, although the original survey and assessment had been completed at dates ranging up to above thirty years ago, a revision of the assessment was now going on in full force and would continue to

be in progress throughout the whole of the next thirty years, until the second series of leases fell in, and the process had to be repeated. Therefore, it was obvious that it was just as necessary for the Government to have this power of control of assessment for revised surveys as it was for them to have it for original surveys.

He would now invite the attention of the Council to the memorial from certain inhabitants of the Bombay Presidency which had been printed as Paper No. 10. This memorial had been signed by a considerable number of the leading pleaders of the Presidency town, and at the head of them was the name of the Hon'ble Vishvanáth Náráyan Mandlik, who was also a Member of the local Legislative Council. This document was worthy of great consideration, not only from the position and ability of those who had signed it, but from the remarkable nature of its contents. He noticed in the fourth paragraph that the memorialists deliberately attributed to the Civil Courts a jurisdiction which the Judges of the High Court had recently stated they were not aware had been imputed to them even in "the wildest arguments of legal practitioners." With this singular conflict of opinion between legal authorities, he would leave his hon'ble friend Mr. Hobhouse to deal more in detail.

It was next urged in the same memorial that in the course of his (Mr. Hope's) speech at Simla, he had not "adduced one solitary proof showing that the judicature in the exercise of its functions had ever abused the powers conferred on it by the legislature." It might not perhaps have been altogether impossible to have adduced some decisions which, in the opinion of revenue officers, and some others, might have appeared contrary to law, contrary to facts, or contrary to Native custom. But to have explained such defects fully would have involved going through the entire history of the cases themselves, which would necessarily have elicited replies and recriminations, and caused ill-feeling, while after all the whole would have been altogether irrelevant, for the reason which he had given at the commencement of his address that day, namely, that he did not think that in a measure of this kind, the Council ought to be influenced by individual cases either one way or the other. He thought the Council would consider that he had exercised a wise discretion in abstaining from such a course as that which the memorialists appeared to be disappointed at his not having adopted. The allegation was not that the Courts had misused the powers they possessed, but that they ought not to possess the powers that they did.

In another part of the same memorial, paragraph 8, it was stated that the memorialists "had been dismayed to find that the objectionable features of the

first Bill appear in all their reactionary aspect in the modified Bill; whereas the alterations effected in it tend still more to the exclusion of the Civil Courts from the exercise of their salutary powers. The principle of exclusion and denial of justice in open Court has thus been made only more general and more positive than before." He scarcely knew how to deal with a statement of this description, because he thought there would have seemed to the most casual observer to be a distinction between the two Bills, and the modifications made in the second in favour of the subject were of the most striking character. The first Bill proposed to raise the old provinces entirely up to the level of the new, *i. e.*, to exclude the Courts entirely in all questions of revenue. The present Bill would not only deprive the old provinces of less than was at first intended, but would admit the new provinces to a larger measure of Court jurisdiction than they had ever possessed since they passed under British rule. The Bombay Government had been more candid than the memorialists, and had fully recognised the material modifications which had been made in the Bill since its first introduction.

Again, it was stated in paragraph 9 of the memorial that "in virtue of section 4, clauses (*c*) and (*d*) and section 6, any mámlatdár or mahálkari, or any officer (or their peons) acting in these capacities, may give assistance of this kind, and enrich one man at the expense of another, without leaving to the injured man any means of redress, or some roundabout remedy which will virtually prevent their obtaining redress." This remark had reference to the provision which enabled the Collector to render assistance to superior holders in recovering rents from their tenants; and it was only necessary to refer to section 5 to see that there was the fullest provision there for all suits between landlords and tenants proceeding without interference, just as they did under the present law.

It was next stated, with regard to what was called *watan* property, that it had "always been dealt with as private property, which could be sold and purchased at one time like all other property." To ascertain how totally mistaken this view was, it was only necessary to look at section 20 of Bombay Regulation XVI of 1827, which was the old law on the subject, to see that the alienation of service lands was extremely restricted, and could not take place beyond the limits of the family of the original holder, and now Act III of 1874 of the local legislature had perpetuated the same provision in a more explicit and equally definite form.

He might, perhaps, have occasion again to refer later on to this memorial in a casual manner; but as a whole, he would now dismiss it with an expression

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of his regret that such a document should bear the signatures of some men whose friendship he valued, and of many whose talents he respected, but whose influence, when thus exerted, he deplored.

He would now pass on to another class of objections which had been raised. It was said that the "statesmen of former days wished to make the people here as happy as those of England by conceding to the former the rights and privileges enjoyed by the latter," whereas now the object of the Bill and the policy of the Government in general, in this and other matters, was to turn India into "a mere Empire, governed by a Great Moghul and a host of rapacious tax-gatherers." It was also said that the principle of the Bill was "unconstitutional," and the changes were rung upon what was constitutional and unconstitutional in an infinity of forms. He could not but think that those who made objections of this description were not fully aware of what "the rights and privileges of the British people" really were in matters of revenue. The simple fact, however, happened to be that there was "no proceeding in a Civil Court in England for the recovery of over-paid or over-assessed taxes; the aggrieved parties can only apply to the Commissioners" appointed for the purpose, that was to say, to the Revenue Officers of Government. And the Court of Exchequer had ruled that it "will not upon motion enter upon any question of rateability to assessed taxes," and that "an assessment under the Assessed Taxes Acts is final and conclusive, unless appealed against" to the Revenue Officers. That was a broad and general statement which applied more or less to all classes of what might be called the Queen's taxes in England. With regard to local taxation, the principle was very much the same; the Appellate Court was different, being usually the Court of Quarter Sessions. But with regard to such taxation also, the law was perfectly explicit, that "no rate * * * or any order, or award or other matter, or thing, made, done, or transacted, in, or relating to the execution of this Act, shall be * * * removed or removable by certiorari or other writ or process whatever into any of the superior Courts." But there was a further point in connection with the English law which was worthy of notice. That was that the Statute of 43 Geo. III, c. 99, which was called the Land Tax Act, contained a proviso that at the time of the hearing of an appeal "no barrister, solicitor or attorney, or any person practising the laws, shall be allowed to plead before the said Commissioners on such appeal for the appellant or officers, either *vivâ voce* or by writing." And this proviso applied to all appeals which followed this statute. Now he ventured to think, that this was one of "the rights and privileges of the British people," which those who raised an objection of this kind would perhaps admit, on reconsideration, that they would rather *not* enjoy. And the

Council could picture to themselves the number of memorials signed by pleaders throughout the country, with which they would have been flooded if the committee had ventured to put such a section as this into the Bill before them. He must confess that the allegation of the Bill being "unconstitutional" was so far borne out that it did not contain this well-established provision of the English law.

Another point which had been raised was that the line which had been drawn in the Bill between different kinds of claims was indefensible. This line the Council would recollect was, that whenever a case or a claim rested upon an express enactment or the provisions of a *sanad*, or upon a deed or a judgment, or other specific basis, the Civil Court should decide; but where a case turned upon a tenure or a custom or any matter more or less of a technical nature, the revenue Courts should deal with it. It was said that this line was totally indefensible. Why, it was said, could not the Courts decide as well revenue officers on "the genuineness or authenticity of documents," on oral evidence, and on "the validity of informal guarantees?" Why could they not judge of the "political effect of political events more or less distant or obscure," and why could not Government give them all the information it might happen to possess? Now in the first place, with regard to political considerations, it was obviously not the business of the Civil Courts to enter into them; it was the duty of the Civil Court to decide on the evidence before it, and if it were to go wandering away from the specific matters before it into any such general considerations as to how the country ought to be governed, it would be entirely neglecting its own proper functions and trespassing on the domain of the executive Government.

Then with regard to the remaining objections as to documents and so on, he must point out, that it had never been said that the revenue officers were better qualified to decide upon *all* documents and so on, but the allegation was merely in reference to the particular nature of revenue documents and revenue tenures, and the like, of which they were presumed to possess special knowledge. With regard to this branch of the subject, he would remark that it might be considered from two different points of view. In the first place, the forms, principles and procedure of the Courts were necessarily in themselves not so favourable for the working out of elaborate revenue cases which might become precedents, as would be the revenue procedure. The Court was necessarily bound to decide upon what was placed before it; it must go upon the particular statements which might happen to be extracted, unintentionally or without full consideration, from individual witnesses and sometimes under

cross-examination. The Court would, perhaps, under some theory of *laches*, refuse to admit in the course of the hearing certain evidence to rebut other evidence with which one of the parties considered he had been surprised. The Court would draw inferences unfavourable to one party from the absence of evidence which would probably have been produced in the Lower Court, if it had ever entered into any one's head that it was required. Many other instances could be given where a Court could not exhaustively and properly deal with this sort of questions, whereas the revenue officer was bound to investigate the matter to the bottom; he might send for any information he required. If he could not make out from the complaint, and the evidence upon which it was based, what the case rested on, he might send for people considering themselves aggrieved, converse with them, find out what they really meant, let them amend their statements, and deal with the case accordingly. In support of this, MR. HOPE would point out that if it were not for such essential distinctions in the procedure of the Civil Courts, there would be no reason whatever, excepting the difference of Appellate Courts, for excluding from the Civil Courts revenue matters in such a province as the Panjáb, where the same officer sat as a Judge in the morning and as a Collector in the evening; and there would be very little reason for having a similar distinction as regards similar suits in provinces like the North-Western Provinces, where the officers who were the Judges had obtained their posts by simple transfer from the office of Collector, and were just as much up in revenue matters as the Collector himself.

Besides this, he must, however, add that in Bombay there was a special disability of the judicial department for dealing with revenue matters; and it was this, that there the revenue and judicial departments were separated from one another, almost, he might say, from the commencement of every individual's service. Instead of passing into the grade of Judge after having been fifteen or twenty years in the country in revenue employ, it was not at all uncommon for young civilians to enter the judicial department as soon as they had passed their examinations, or at any rate, three or four years after entering the service, and when, in a great number of instances, their knowledge of the country and of the people could be, at the best, but skin deep. He was not now offering any opinion as to whether the system of separation of the two branches in Bombay was a proper system or the reverse. It might be that this system was highly favourable to the cultivation of judicial knowledge. All that he contended was that it could not also permit the acquisition of revenue knowledge. There could be no doubt that the Bombay judicial department, as a whole, were a body of trained lawyers who were inferior to none in India, whether in or out of the civil service. All that he

contended was, not that they were not so, but that from the fact of their being so, they could not also be trained revenue officers.

However, let us take, MR. HOPE proceeded, an illustration of this point. Let us suppose some elaborate revenue case—a case, we would say, in which intricate and obscure land tenures were involved, where it was necessary to consult the revenue records and accounts of the country for a couple of hundred years; where it was indispensable also to know the whole revenue history of the district and the surrounding districts for years before the country had passed under British rule; where documents were bristling with revenue terms, half of them partially obsolete, and there was very little of real law at the bottom. Such a case we should probably see taken up in the first instance by an experienced Assistant Collector, who would go through it, take evidence, collect accounts and documents, and submit his own view on it to the Collector. The case would then be considered by the Collector, possibly by two or more Collectors, and when it had been thoroughly sifted, it would be handed up to the Revenue Commissioner, who, in Bombay, was an officer of the very highest standing and authority, and had revenue control over one-half of the presidency. From him it would go up to the Government, and if there was any legal point in it, the legal adviser of the Government would no doubt be consulted. It would then be taken up by the Revenue Member of the Council, and finally the orders of the Government would be issued.

On the other hand, we might imagine the same case in the hands of the district Court and the High Court. We should find the Courts and the Counsel on *both* sides striving with great zeal, honesty and ability, to make out what the whole thing was about. We might find dictionaries of doubtful authority consulted as to the meaning of revenue terms; we should probably find one side or the other pinned by the Court to ill-weighed statements made by individual witnesses. Old printed reports about one thing, might be supposed to apply to another really quite different. We might also find a whole mass of papers and accounts, perhaps some four or five hundred, handed over to the translators down at the presidency—papers in regard to some of which the entire value depended upon some idiomatic term of the Native language; and the result of such translation might be somewhat similar to what might be that of an English charter or title-deed some two hundred years old, when rendered into Hindústání by a European. And on these data the Court, with great care and industry, would pass as good a judgment as it could.

And yet, after all, if it so happened that the decision of the Court was different from the decision of the chain of revenue officers, we should

probably at once find a whole series of persons who would be ready to denounce, as something little less than criminal, the views which the revenue officers had taken. We should be told that this was "a just judgment," giving the people "their rights," of which over-zealous and indiscreet, if not rapacious and dishonest revenue officers, had banded together in order to deprive them. Yet on what principle could such an assumption be defended? Would the very parties who put it forth, act upon a similar assumption in the relations of private life? Suppose a man's house was leaking, would he call a consultation of doctors; or if his health was affected, would he convene a committee of engineers? The only ground upon which MR. HOPE could understand such an assumption being tenable, would be, that the Courts had necessarily and intrinsically a monopoly of all equitable feeling, knowledge and common sense. He need scarcely say, that no judicial officers would ever dream of claiming such a monopoly as that, which was practically ascribed to them by their too zealous advocates.

MR. HOPE was well aware, that it might be said that this argument went too far; that altogether, it proved a great deal too much. It might be said that if the revenue Courts were really as good as he tried to make them out to be, we ought to hand over to them the decision of all revenue matters between private parties, and not merely those in which the Government was concerned. There were three answers to this objection, first,—that usually private relations were not by any means so complicated as, and were more of the nature of simple contract than the relation between the State and the subject. Likewise, it might be said, that where the State was involved, the interests were more important than mere private interests, because, although it might not matter to the nation generally whether A or B had a particular piece of land, it mattered very much to them, whether or not they were all to be taxed in order that A might enjoy an exemption. Thirdly, he might add that, to a certain extent, we did at present entrust such matters to the revenue Courts. In the Burma Land Revenue Bill, for instance, which was passed not long ago, there was an express provision that if the Civil Court found any doubt about the status and rights of a landowner, it was to stay proceedings, and refer to the Collector to decide the question. Similarly with regard to rent. We were all aware that rent suits had been in various parts of India transferred from the Collector to the Civil Courts only recently, and there was still a great difference of opinion whether this transfer was a wise and workable one or not.

He would now change the subject to another point. It had been said in the memorial of the Hon'ble Vishvanáth Náráyan Mandlik and others,

that the Courts were "the only specific assurance to the people of the justice and sound policy which actuates Government in its dealings with its subjects." And the decisions of the Civil Court again had been said by another critic to be in "ninety-nine cases out of a hundred against the Government." Now he was not prepared with a return of the whole of the civil suits in the Bombay Presidency and their general result. But he did happen to have a return of the suits filed in the large Collectorate of Surat for nine years, *i. e.*, between the years 1866 and 1874, both inclusive. This was a period, as it so happened, during which a series of the most important interests were dealt with in that Collectorate. Nearly the whole of the alienations were disposed of under the provisions of Act VII of 1863, the Summary Settlement Act; and thus thousands upon thousands of cases of disputed area, tenure, &c., were investigated and decided. Besides that, the revenue survey was introduced throughout the whole Collectorate; and finally, the city surveys, which related to landed property in large towns, were carried out in the town of Surat with a population of above 100,000, and in two other towns with a population of 10,000 and 15,000 respectively; so that altogether it would have been difficult to select a period in which those terrible fellows, the revenue officers, could have worked more havoc amongst the rights of the people, or in which the protecting genius of the Civil Courts might have been more needed to throw "the *ægis* of law" over the oppressed. Yet, what were the facts? There were altogether within those nine years one hundred and one suits, of which he might remark that very nearly one-half were either instituted before he had anything to do with the Collectorate, or related to matters which had happened independently of him. He merely happened to have had the troublesome task of defending most of them. If we deducted thirteen cases which turned upon two others, the decision of individual points in which governed the whole number, and three more which were now pending, we got a balance of eighty-five. Of these, fifty-three were decided entirely in favour of Government; five more were partially decided in its favour; two were withdrawn by the plaintiffs themselves, and three more, which Government had gained, were still under appeal, which made sixty-three to the credit of the Government. On the other hand, fifteen had been won by the plaintiffs, five had been compromised by the Government, including two in which the Government had got favourable decrees in the lower Court which they did not think it safe to pursue, as the wording of the law was doubtful and contrary to the intentions of the legislature, and two were under appeal. That made twenty-two cases given against the Government as against sixty-three decreed in their favour; or, in other words, instead of ninety-nine out of every hundred cases going in favour of the people, three out of every four were decided in favour of the Government. Now, he could only say that if this

was the "only specific assurance to the people of the justice and sound policy" of the Government, as stated by the Hon'ble Vishvanáth Náráyan Mandlik and the other memorialists, they were assured by very little, and it seemed to him that it would be more appropriate to apply to the action of the Civil Courts than to the Bill before the Council the language of the Hon'ble Mr. Vishvanáth and his fellow memorialists, namely, that it was "a sweeping measure of exceeding stringency, and as against the subject, with but a small modicum of utility." He could scarcely understand such enthusiastic advocacy of popular resort to the Civil Courts on the part of the Hon'ble Mr. Mandlik and his friends, except by supposing that they adopted the somewhat homely maxim, which, though well known, had not yet found a place in legal text-books, that "a woman, a dog, and a walnut-tree, the more you beat them the better they be."

It might be asked, if the Government generally won all these suits and the people liked it, why should you alter the law? The Canara case has been decided in your favour; six Ratnagiri cases have been decided in your favour; the Chief Justice has delivered an extra judicial speech in your behalf. What more can you want? Cannot you let well alone? It was true that the users of this argument were equally ready with the opposite one—You have lost such and such a case. Therefore, of course, "the fate of the Revenue Jurisdiction Bill is sealed." However, letting that pass, he would but briefly observe that the change was required because of the enormous amount of friction, the immense delay, and the waste of time and money which all these suits caused; because of the political embarrassments which Sir Barrow Ellis had explained to the Council, and the fiscal difficulties involved in even a single erroneous decision which Mr. Hobhouse had dwelt upon; and because, as he himself had already said to-day, the Government could not look to individual suits, but to the broad general principle of any measure which they were considering.

He had now only one more point to refer to, and it was this. It was said that "however just and independent revenue officers may be, * * * it cannot but be that their minds perhaps unconsciously are biassed in favour of the Government," and it was asserted, as a matter of fact, by a different critic, that they were prejudiced and did habitually decide in favour of the Government and to the detriment of the people. Now, he thought that those who made such allegations as these, did not bear in mind that a revenue officer had two interests, as had been pointed out by his honourable friend Mr. Hobhouse; and that the one in favour of keeping the people quiet, of collecting the revenue smoothly, and so gaining with

his superiors the character of a man of tact and moderation, who could rule his district to the benefit of the Government and the satisfaction of the people, prevailed more, so far as he had experience infinitely more, than the mere desire to add a few rupees to the revenue, which would perhaps never be noticed even by the Accountant-General. Such an accusation, too, could at best apply only to the men who were quite in the lowest grade of superior revenue officials, who might perhaps sometimes get over-interested in a case they had worked out in detail. It could not apply to all the superior officers, who were often, perhaps, much more ready to criticise the acts of those below them than to adopt the views which they offered. On the last occasion on which he had the honour of addressing the Council, he had referred to the "conscientious liberality of the revenue officers themselves, who he knew from his own experience, and otherwise, habitually decided, and had decided thousands of cases, in favour of the subject which if they had been referred to the Civil Courts must, under the rigid rules by which the Courts were conducted, have been decided in favour of the Crown," and in support of this, he should like to lay before the Council one illustration. It was that of the city surveys. These surveys involved the setting out of boundaries of all properties in large cities, and enquiries into the tenures and titles under which they were held, with the names of the parties possessing them, as also the measurement of the whole and the issuing of title-deeds. In short, these surveys were a matter of the very greatest importance, and it was said when they were first started, that the rights of the people would inevitably be trampled on by the revenue officers, with much more of the same sort of declamation as we had been favoured with in this matter. These surveys had now been completed in four large cities, Broach, Surat, Bulsar and Rander, after having lasted over a period of above ten years. In Broach, with a population of from 30 to 40,000, the survey had lasted five years, and seven different officers had been engaged on it. The number of decisions was 20,047, the *sanads* issued were 9,596, but the appeals were only 445, or little more than two per cent., though a considerable portion of them were decided in favour of the appellants. As to civil suits, there were only three, of which one was decided entirely in favour of the Government, another partly so, and the third was withdrawn on the death of the plaintiff. Again, in Surat, with a population of 107,000, the survey had lasted nine years, and there were ten different officers engaged on it. The decisions were 47,133, the sanads issued were 26,404, and the appeals 491, or scarcely more than one per cent. This was not from any want of encouragement to appeal, because nearly one-half of the appeals were decided in favour of the appellant. The civil suits were nineteen; of these five were still pending, eight were decided in favour of the Government, two were with-

drawn by the plaintiffs, and out of the remaining four, one was lost and three were compromised by the Government themselves, two of them, because it was not thought safe to push on appeal the interpretation of a law which did not very well express the intention of the legislature. At Bulsar, with a population of about 15,000, there had been 5,247 decisions, and at Rander about the same number, with the same other general features. Only one question, involving ten cases, had been taken to Court and decided against Government. Now, considering that these surveys had lasted so long a time, and that these cities were so large and rich, containing a population of wealth and intelligence, that there was an abundance of educated pleaders about the district Court, and that there was also there "Her Majesty's opposition," who might be counted on one's fingers, but who were always ready to make the most of everything that occurred, MR. HOPE thought that if the revenue officers had possessed any such biassed, indiscreet and rapacious tendencies as were ascribed to them, "what was bred in the bone" must have "come out in the flesh," and this whole district must have been driven into outcry or rebellion. Yet the fact was just the reverse. It appeared to him that this imputation of bias to the revenue officers was as unjust and unreasonable as would be the opposite allegation, that the Civil Courts had a tendency to consider every Collector as a wrong-doer, and to yield readily to the fascinations of posing in the attitude of protectors of the poor. Both would be equally false and untenable, and such allegations were both unjust to the great department at which they were levelled, and unworthy of the quarter, whatever it might be, from which they proceeded.

In conclusion, he would briefly recapitulate the grounds on which the Council were asked to pass this measure. First of all, the state of the law was uncertain, so uncertain that we had the leading pleaders of Bombay at issue with their own Chief Justice and High Court. The law likewise was exceedingly anomalous, as it was found that in the new provinces there was an unnecessary exclusion of the Civil Courts, while in the old provinces there was an extreme admission of them, so extreme an admission as to be greater than that which existed in any other part of India or even in the United Kingdom. Further, this uncertainty and extreme admission of the Courts was not unlikely to lead to consequences which were embarrassing both fiscally and politically; and the chances of such embarrassment were enhanced by the peculiarity of Bombay judicial officers not also having revenue experience. Upon those who objected to the Bill lay the burden of showing why one portion of one Presidency of India should be treated quite differently from the rest of India and England, and that they had altogether failed to do. On the contrary, they had been obliged to take refuge in a variety of exaggerations and misrepresentations

which had been more or less fully exposed. Under these circumstances, he thought the Council might pass the Bill without hesitation, in the full confidence that it would redress the glaring anomalies which now existed, and remove the risk of complications and difficulties in the future.

The Hon'ble MR. HOBHOUSE said :—" My Lord, when I spoke about this measure in October last, I told the Council that I was not competent to discuss anything but its most general principles, and that many, if not most of its details, were such as required more experience than I had to handle in this Council. I did not think then that it would have become necessary for me to address the Council again upon those principles; but I find that it is necessary, because an entirely new view of the existing law has since been promulgated, and it has been urged upon us that such new view is quite satisfactory, that the principal motive for the Bill is removed, and that the Bill itself may safely be dropped.

" It certainly is true that if the law be what we are now told it is, the most important provisions of this Bill, by far the most important in my opinion, amount to little more than a declaration of that law. And though I think there would still be ample reason for passing this Bill, others in this Council or elsewhere may think differently, and it is therefore incumbent on me to recapitulate the view of the law upon which we have hitherto acted, and to state what I understand to be the true view, and under what circumstances the new light has reached us.

" Now our late colleague Sir B. Ellis, when he first launched this measure, based its expediency on the state of the law which he described. I will read some passages from the report of his speech on that occasion.

" He mentioned a decision of the High Court of Bombay, in a suit brought by one Wamnaji, to the effect that an assessment was faulty because it exceeded a sixth part of the assets of the estate. The report then proceeds as follows :—

" ' The result was that the ordinary principles which regulated the Bombay system of survey and assessment were entirely upset; for there was under that system no local or other rule which required one-sixth of the gross profits to be the limit in assessment. The result, then, of the decision of the High Court—if we acquiesced in it—was that the principles of our settlement throughout the country would have to be modified contrary to the opinion of those who were best able to judge. Such was the effect in this particular suit. In other cases, equally injurious effects might follow if the present practice were continued. For example, certain modes of assessment, and certain principles of assessment, might have been adopted by the State. Those modes and principles might not commend themselves to the learned Judges,

and in cases practically involving broad political questions, and matters of State policy, the opinions of the Judges of the High Court might overrule the deliberate decision of the Government here or in England. There were other minor evil consequences, which followed on the present system. He need hardly say that if, under the Ryotwarri system in Bombay, every man was allowed to question in a Court of law the incidence of the assessment on his own fields, the number of cases which might arise was likely to be overwhelming. The suit to which MR. ELLIS had referred, one of Rs. 4 only, was an instance of the small amounts which might be brought into Court, and if cases of this kind were frequent, and the Survey officers had to give evidence in each of them, the result would be that their time would be so fully occupied with such matters that they would be unable to attend to their duties, and the whole machinery of the Survey and Settlement Department would be disorganized. Moreover, it might be questioned whether Judges learned in the law, however skilled they might be to decide the cases ordinarily brought before them, were best fitted to deal with matters requiring special and technical knowledge, and which had been settled and decided by officers who had been all their service trained in this special branch of knowledge.'

"The reasons then given, briefly stated, were two. *First*, that the law cast on the Judges duties which they could not perform so well as Revenue officers. *Secondly*, that if every man might question in a Court of law the incidence of an assessment on himself, the public business could not go on.

"The Council are aware that the provisions of the Bill have been the subject of very animated controversy in the Presidency of Bombay. In fact, there came in petitions and utterances from several quarters, some of them from very well-informed gentlemen, adverse to the Bill, or to what the objectors supposed to be contained in it. But when we met at Simla in October last to reconsider the matter, we did not find a suggestion from any one that we were wrong in our estimate of the law. When I addressed the Council, I pointed out that the opponents of the measure, though in my judgment they were by no means wholly wrong, had not done justice to their case, because they insisted on maintaining in unaltered simplicity a law the terms of which were dangerously wide, which might have worked well enough with the machinery which existed fifty years ago, but which could not be considered as workable now. I then pointed out the nature of the law as Sir B. Ellis had done before, with somewhat, though not with very much, more of detail. The only difference between us was that he attributed the state of things to the ruling in Wamnaji's case, whereas I considered that ruling to be a right and necessary one, and showed that the results which were complained of, and those which were apprehended, were necessarily involved in the Regulation we are seeking to alter, namely Regulation XVII of 1827.

"That was the position of the case in October last. But it happened that in the month of December a division of the High Court of Bombay had occasion

to deliver judgment in a revenue case known as the Kabilpur case, and in the course of that judgment they referred to the views of myself and Sir B. Ellis, and stated that they thought us wrong. It is right that I should read to the Council a full account of the exposition made by the learned Judges, one of whom is the very able Chief Justice, Sir M. Westropp, and the other a learned Civilian, Mr. Justice Melvill. They quote some sections of the Regulation, the matérial ones of which I read to the Council before. They run as follows :—

"'II. *First.*—All land, whether applied to agricultural or other purposes, shall be liable to the payment of land revenue to Government, according to the established principles which govern the assessment of that description of land to which it belongs, except such as may be proved to be either wholly or partially exempt from the payment of land revenue, under any of the provisions contained in Chapters IX and X of this Regulation.

"'*Second.*—Provided, however, that nothing contained in the preceding clause, or in the enactments therein cited, shall be understood to affect the right of Government to assess to the public revenue all lands, under whatever title they may be held, whenever and so long as the exigencies of the State may render such assessment necessary.

"'IV. *First.*—When there is no right on the part of the occupant in limitation of the right of Government to assess, the assessment shall be fixed at the discretion of the Collector, subject to the control of Government.

"'*Second.*—When there is a right on the part of the occupant in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, the assessment shall not exceed such specific limit.

"'IX. *First.*—The Collector's decision upon any question arising out of the provisions of the preceding sections shall, in the first instance, be obeyed and acted upon as the rule.

"'*Second.*—But if any person should deem himself aggrieved by any such decision, he may either present to the Collector a petition, addressed to Government, praying for redress, or may file an action against the Collector in the Civil Court, under the ordinary rules, or he may pursue both methods at the same time.'

"The principal sections are section IV and section IX, on which these observations are made :—

"'Section IV, clause 1, enacted that '*When there is no right on the part of the occupant in limitation of the right of Government to assess*, the assessment shall be fixed at the discretion of the Collector, subject to the control of Government.'

"'The special subjection of the *discretion* of the Collector to the control of Government, on the principle of the maxim *expressio unius est exclusio alterius*, precludes the construction that the Collector's *discretion* is subject to the control of the Civil Courts.

"'Section IV, clause 2, of the same Regulation enacted that 'When there is a right on the part of the occupant in limitation of the right of Government, in consequence of *a specific*

limit to assessment having been established and preserved, the assessment shall not exceed such specific limit.'

"'This clause deals with 'rights,' not with 'discretion,' and contains no provision, either express or implied, that 'rights' are to be excluded from the consideration of the Civil Courts. That portion, therefore, of clause 2 of section IX, which gives a resort to the Civil Court, would operate upon questions of right arising out of a specific limit to the assessment.

"'Section IX, clause I, enacts that, "The Collector's decision upon any question arising out of the provisions of the preceding sections shall, in the first instance, be obeyed and acted upon as the rule.

"'The second clause of the same section is important. It enacted as follows :—'But if any person should deem himself aggrieved by any such decision, he may present to the Collector a petition, addressed to Government, praying for redress, or may file an action against the Collector in the Civil Court, under the ordinary rules, or he may pursue both methods at the same time.'

"'*Third.*—The Collector shall forward to Government, without delay, any petition presented to him under the preceding clause; but the reference to Government shall have no effect upon any suit instituted in the Civil Court.

"'The observations already made upon clauses 1 and 2 of section IV, show that in order to give to those clauses respectively their full and just effect, the second clause of section IX must, in matters of assessment, be read distributively, or as it is called, *reddendo singula singulis.* Thus Government must be regarded, when a petition is presented to it by a person deeming himself aggrieved by a decision of the Collector, as having authority to deal with it as Government may please, the discretion of the Collector being in all respects subject to the control of Government.

"'But in the case of an action in the Civil Court, the latter can only interfere with regard to (*i. e.*, adjudicate upon) the legal right or title of the plaintiff to exemption or partial exemption from payment of land revenue, by reason of the existence of a specific limit to the assessment in the case. This construction at once harmonises all three clauses, without violating the provisions, express or implied, contained in any of them, and also attains the object set forth in the preamble.

"'Those two clauses of section IV are most important, when taken in connexion, as they must be, and, as we believe, they always have been, with the second clause of section IX, as fixing a boundary beyond which the Civil Courts may not travel in questions of assessment of land revenue.

"'We have, therefore, with most astonishment learned that, in a quarter which is entitled to better information, it has been stated that the discretion of the Collector is, in all matters of land assessment, subject to that of the Civil Courts—that there is not a single question which can arise in the course of a settlement, whether it relates to the fertility of soils, or the prices of produce, or any other matter, if any there be, even more impossible for a Court of law to investigate, which may not be taken out of the skilled hands that can deal with it and carried before a tribunal that knows nothing about it. It has been also said that the Civil

Judge may even control the broadest principles of an assessment; that he may disapprove of the portion of the assets which the Government think it right to take; that he may think that the assessment ought to be governed by prevailing rates of rent instead of the productiveness of the soil and the rates of prices, or he may think the contrary, that he may even decide that the exigencies of the State are not such as to warrant the imposition of such an assessment as the Collector has decided to impose, that in all these cases the decision of the Revenue officer is expressly made disputable in a civil action; that, in short, the whole land revenue system of the country is, by this Regulation, made subject to the control of the Civil Courts.

"'With all due respect for the high quarter in which this view of the jurisdiction of the Civil Courts of this Presidency in its older provinces has been thus expressed, we must most emphatically state, as we have already stated in the progress of this case, that the Civil Courts have not any such jurisdiction as has been thus ascribed to them; and that, so far as the Judges of this Court know, the Civil Courts have never asserted that they have or ever had any such jurisdiction. Nay, further, those Judges are not aware that, even in the wildest arguments of legal practitioners in those Courts, any such jurisdiction has been imputed to the civil tribunals.'

"They then refer to the Canara case, saying that if the jurisdiction in question had existed, they would have been called upon to exercise it then; but that in point of fact the question had never been raised.

"And they add—

"'We took that opportunity of disclaiming any such jurisdiction, in consequence of remarks made some time previously in the same quarter as that already mentioned, but by a different speaker, which attributed to the Civil Courts an extent of authority which they never possessed, and, so far as we know, never claimed.'

"Then after commenting on Wamnaji's case and some others, they continue as follows:—

"'We are inclined to the opinion that the jurisdiction should be regarded as thus circumscribed even independently of the fourth section of that Regulation. For we should be disposed to hold that section IX (which empowers a person deeming himself aggrieved by the decision of the Collector, to file an action against the Collector in the Civil Court) does not authorize the Court to exercise any control over the Collector unless he transgress the law. That is the proper and well-understood sphere of action of Courts of Justice, and, unless a contrary intention be clearly indicated, the legislature should not be regarded as intending to confer upon them any greater power. The preamble, which points out that the intention of the legislature was to provide means for determining as to the title to exemption from payment of revenue when the Revenue officers deem that title to be insufficient, is completely consistent with that view. The ninth section should, we think, be interpreted in that light. Neither in that section nor in any part of the Regulation is there, in our opinion, the faintest intimation of a desire on the part of the legislature that the Civil Judges should be transformed into Revenue Commissioners, or Collectors of a superior grade. We should no more deem the Civil Courts entitled

to arrogate to themselves the duties of those offices, than Lord Selborne, sitting in Chancery, did to assume functions assigned by Statute to a School Board (L. R. 9 Chan. App. 122) or Sir G. Jessel sitting in the Rolls Court did to appropriate to himself functions conferred upon a Railway Clearing Committee (L. R. 20 Eq. 383).'

"That is a pretty full account of what is laid down by the learned Judges, and I confess that I read it with great satisfaction, because, though it does not command my assent, it supplies a complete justification of the most important provisions of this Bill. Those provisions are to be found in section 4 (*b*), where it is enacted that no Civil Court shall exercise jurisdiction over—

"'(*b*) objections—

"'to the amount or incidence of any assessment of land-revenue authorized by Government, or

"'to the mode of assessment, or to the principle on which such assessment is fixed.'

"So complete is the justification that we have actually been urged to drop the Bill, or, at all events, this portion of it, on the ground that it enacts nothing new. It is therefore my duty to assign to the Council the reasons why I think the Bill to be expedient and indeed necessary.

"In the first place we must not imagine that because we are told that certain controversies have not been raised in Court, there are none such in the country. The view of the law which I submitted to the Council in October last was formed after a perusal of the arguments of the opponents of this Bill and upon a careful comparison of them with the terms of the Regulation itself. The memorials which have been sent in to us have come from intelligent and influential people, associations of landholders and others, who either have among their numbers a strong infusion of vakíls, or have been assisted by vakíls in the preparation of their memorials. I take a paper coming from the Desais of Chikli and read thus:—

"'The authority which the Civil Courts now possess in the older districts, that is, in Guzerát and the Konkan, in matters relating to land, is unrestricted. Our humble prayer is that this authority may be continued intact.'

"I turn to the petition of the Ahmadábád Association and find the following passages:—

"'Your Excellency's petitioners beg to urge that, from a political point of view, the Bill would seem to be highly inexpedient. The policy of the Government of India in the matter of land-revenue is not so indefensible as to require the protection of a special legislative measure to uphold it. They believe that the policy is sound enough on the whole to bear the

'ight of a public judicial enquiry They would, therefore, ask respectfully Your Excellency in Council to reject a measure which cannot but create suspicions as to the intentions of Government, and serious discontent and alarm among the agricultural classes of Guzerát and the Konkan, and which, in some measure, at least must impair the character of the Government for impartiality and fair dealing.

"'Your Excellency's petitioners beg to state that section 2 of Regulation XVII of 1827 states that 'all land whether applied to agriculture or other purposes shall be liable to the payment of land revenue to Government according to the established principles which govern the assessment of that description of land to which it belongs.' These established principles have never been enumerated by Government, and as far as Your Excellency's petitioners are able to observe, Government have been guided by a desire to increase the revenue, and have, in many respects, departed from the established and well-known principles of taxation of land, which had been generally accepted by former Governments. Under the Hindú system there was a body of watandars and zamíndárs, who represented village communities and interceded between the ryots and the Government, so as to get a reduction in unreasonable extortions and correcting errors which led to over-taxation. This class of people has been set aside, and no Revenue Authority or Survey Commissioner ever thinks it worth his while to consult them. The Revenue and Survey Departments settle the assessment to any amount without any check or representation from the people. The principles on which assessments are fixed may be known to Government, but they are not explained to the people or to their representatives. The consequence has been that the revenue has been enormously increased by means which were never resorted to by former Governments All perquisites and fees of zamíndárs known as hakks, and allowances granted to village communities, as Chillas and Malveias and Gam Kharacha, have been abolished as far as the recipients are concerned, but instead of any reduction being made on that account by the land-tax, it has been increased by that amount. The inám and mirás tenures are virtually upset. New modes of levying revenue from land have been invented, such as the sale of the right of occupancy, of fruit-trees, quit-rent on pasture lands, sale of stone, earth, sand and water, city-lands and settlement on freehold lands, watans, ináms and many others, and some of these are made to yield extortionate sums, as in the case of brick-makers and potters. To these may be added ábkárí and salt-revenue, which yield very large sums of revenue. In consequence of these causes a taluqa which yielded two lákhs of revenue, now yield six. The pressure of the land-tax on these taluqas, which were settled during the American war, and the high prices then reigning, is crushing, to say nothing of opium, stamp, municipal, judicial and registration taxes, and various tolls, which form separate items of revenue. The crushing nature of this taxation is testified by the extraordinary amount of debt, which exists in each village, the number of fields annually relinquished, the extent of waste-lands in each taluqa, the generally wretched condition of villagers, and the number of the vagrant and begging population, strolling in every corner of the country. Under all these circumstances, it is necessary that the ryot should be protected against the errors, indiscretion and over-zeal of survey officers, anxious always to show an increase as the result of their labours. The judicial Courts are, under the circumstances already enumerated, the only refuge for the poor ryot, and constitute the only remedy against the ever-increasing pressure of taxation. To deprive him of this remedy is, Your Excellency's petitioners most earnestly submit, equally unjust and inexpedient.'

"I ask whether you could have any clearer assertion that the whole policy of Government in raising land-revenue and the whole principles of assessment are subject to control by the Civil Courts.

"But I have, if possible, even stronger evidence of the prevalence of this view in well-informed quarters. The Council will remember that one of the early clauses of this Regulation expressly reserves to the executive a right to assess 'all lands under whatever title they may be held, whenever the exigencies of the State may render such assessment necessary.' That is to say, a supreme political necessity is to override all contracts, all bargains, all claims to exemption or privilege of any kind. That a Court of law should have a voice in such a matter would be most inconvenient, and I put it as the most extreme case of inconveniences arising out of the literal construction of the Regulation. Is there, then, a question, or is there not, whether such a jurisdiction exists? Now the last memorial we have on this matter is dated the 26th February 1876, two full months after the delivery of the judgment in the Kabilpur case. It is signed by Vishvanáth Náráyan Mandlik and twenty-one others. Mr. N. Mandlik is an eminent vakíl, and is moreover a Member of the Legislative Council of Bombay. I am told that of the twenty-one others, at least seven or eight are practising vakíls. Then, what does this body of skilled legal practitioners tell us? They refer to the section in question, and proceed thus:

"'And yet the framers of this very section did, it will be perceived, modify and define the limits of the comprehensive claim they had themselves assigned to the State, by providing, in sections 8 and 9 of the same Regulation (XVII of 1827), for certain powers to the Civil Courts in the older districts of the presidency to adjudicate in all matters of dispute between the State and the subject. The legislature of that period considered such safeguards against the possible arbitrary proceedings of Revenue officers to be necessary, and the lapse of fifty years has only tended to confirm the wisdom of this provision.'

"We heard yesterday from the Ahmadábád Association that they concur in these views.

"Now I think it will be plain to the Council that there lies before us a formidable controversy if we suffer this law to remain unaltered. I never told the Council that the whole of the jurisdiction which the two learned Judges now disclaim had been assumed or pressed upon Civil Courts in any case. I said it was certain to be so pressed. I pointed out how one question after another had been found to fall within the jurisdiction of the Court; how at last it had been found, contrary to a former extra-judicial opinion, that even the rules and principles on which the officers did their business might be enquired into there; how it had been decided that a Collector must come into Court and give evidence about the rules or principles of his assessment; and I said that all the rest must follow in time. I find no instance stated in which the Civil Court has

rejected a suit summarily on the mere ground of want of jurisdiction, unless it be under Acts passed for the express purpose of abridging the extravagant powers conferred by this Regulation. In every case I have come across, the Government, if they would not be cast in the suit, have been compelled to prove exactly what their operations were. And if I were asked why I advise a further abridgment of powers the existence of which is disputed, I answer as the fox did to the lion :—

Quia me vestigia terrent
Omnia te adversum spectantia, nulla retrorsum.

"I need not say that if I had known that there were Judges on the Bombay bench who differed from the views expounded by Sir B. Ellis, I should have addressed the Council far otherwise than I did. I should, indeed, have thought it incumbent on me to state my own opinion; but I should have accompanied it with the information that there were others who, as far as authority goes, were better entitled to be heard than myself, and who were of a different opinion. But the learned Judges never sent us any statement or hint that we had mistaken the law. It seems that two of them thought it right in the Canara case to answer Sir B. Ellis' speech in Council. But though the Canara case was decided, now I believe nine or ten months ago, no copy of the judgment has been procurable by me for love or money up to the present moment. I have asked, and the Government of India has asked, many times for a copy, and we have always been told that it is not ready. In last addressing the Council on this subject, I mentioned the disadvantage I laboured under in not having seen the judgment in the Canara case. No doubt the learned Judges have very good reasons for the course they have taken; it is their business, and I say nothing against it. But I have to justify myself for not laying before the Council all the available materials for judging of this legal question; and I do so by saying that, until the publication of the Kabilpur judgment in December 1875, I was in total ignorance that anybody had expressed or formed an opinion that a wrong construction of the Regulation had been suggested to the Council in the month of August 1873.

"But then it may be said that whether there is or is not a controversy with landowners or with the legal profession, the Judges have settled the law. To that I answer, *first*, that they have not settled it, and, *secondly*, that the settlement they would propose would not be altogether satisfactory.

"It has been my duty on a previous occasion to explain to this Council the broad and well-known difference between judicial and extra-judicial opinions. The former are called for by the circumstances of the case; they have been the

subject of argument; they are delivered under all the responsibility which lies on the Judge to do exact justice between the suitors; and they may be challenged by appeal. They are in fact the actual application of the law to the facts of the case, and are law until set aside by competent authority. But the latter have not the same conditions attached to them; and though they are to be received with great respect, they are not law. Now in this case the remarks which have fallen from the learned Judges are both in substance and in form extra-judicial. Nothing can be more explicit than their statement, that they are not dealing with anything in the case before them, but simply with the speeches made in this Council. In the Kabilpur case they say, speaking of the Canara case :—

"'It was not, however, so much as for one moment contended, by the learned and very able counsel for the plaintiffs, that * * * * the Court had any jurisdiction to interfere in the assessment, or discretion left to it by law with respect to the extent of the enhancement.'

"And again :—

"'We took that opportunity of disclaiming any such jurisdiction, in consequence of remarks made some time previously in the same quarter as that already mentioned, but by a different speaker, which attributed to the Civil Courts an extent of authority which they never possessed, and, so far as we know, never claimed.'

"In the Canara case, therefore, the Court was answering Sir B. Ellis. In the Kabilpur judgment I have already read passages showing that they were answering myself and not addressing themselves to any point made in the case.

"These remarks therefore come with great weight, as everything on such a subject must come from such a quarter; but they are not, and do not profess to be, a judicial declaration of the law as applicable to the case before the Court. They must have the same effect, neither more nor less, as they would have had if the Judges had followed the more usual course of stating their views to the Council through their Registrar.

"Moreover, I am bound to state my conviction that, if the point had been raised and argued, the learned Judges would have found the stress of the argument too strong to resist. For this conviction I must state my reasons, though I fear that the brevity I am compelled to observe will hardly allow of justice being done to the subject.

"It will be observed that, in expounding the Regulation, the learned Judges fasten upon section IV, which says that where there is no limit of the right to assess, the assessment shall be fixed at the discretion of the Collector, subject to the control of Government, and they say that the Civil Courts are thereby excluded by implication. That might be so if it were not for

the express words of the overriding section IX, which contains nothing whatever that is at variance with section IV, but only shows exactly how far the Collector's decision is to operate, and how it is controlled. In any question, without exception, arising out of the preceding sections (the section preceding section IX) the Collector's decision is to be the rule *in the first instance only*. If any person deems himself aggrieved by such decision, he may petition Government or bring his action, or do both.

"The conclusion drawn by the learned Judges is that the jurisdiction given to the Courts is confined to 'the legal right or title of the plaintiff to exemption or partial exemption,' and that the extensive words of section IX must be cut down by what is called the distributive construction, or *reddendo singula singulis*. But to confine the jurisdiction to cases of exemption is not reconcileable with, in fact it would almost if not wholly nullify, the language of section IX. That section provides for controlling the Collector's decision upon any question arising of the *preceding* sections, and the controversies about exemptions are dealt with in certain *succeeding* sections, which prescribe the duties of the Collector and of the Courts. According to the ordinary meaning of words, a limit to assessment is the same thing with an exemption; and if that be the construction of the Regulation, section IX would be nullified by the suggested construction. I believe, however, that according to the decisions, there may be a limit to assessment which is not an exemption within the meaning of the Regulation; still the great bulk of exemptions are dealt with by the subsequent and not the preceding sections, and so these sweeping words of section IX would be cut down to insignificant dimensions. I conceive, therefore, that it must be the other numerous proceedings that are mentioned, and not the exemptions, which are contemplated by section IX.

"The same consideration throws great difficulties in the way of any distributive construction at all. That construction is of use where a number of different directions are applied indiscriminately to a number of different particulars. If then it is found that a manifest absurdity results from applying the whole of the directions to the whole of the particulars, but that each direction is sensible if applied to some one particular, you may legitimately distribute the language so as to apply each direction to its appropriate subject. But in order to use such a construction, you must first have your antecedent string of different particulars to which the directions are indiscriminately applied. But I have shown that these particulars are either not to be found at all, or are found in too small quantities to satisfy the extensive words of section IX in the sections of this Regulation which precede that section.

"There is another element in section IX which is equally fatal to a distributive construction. It is of the essence of a distributive construction that the directions shall find each its own subject, and shall not overlap or jostle one another. But here we find that the aggrieved man is told not merely that he may take the one course or the other, but that *he may take both at the same time.* I cannot conceive any words more conclusive to show that the jurisdiction of the executive and of the judiciary was meant to be a concurrent jurisdiction, to extend to the very same subjects at the very same time. To each is given a control over the Collector by identically the same set of words in identically the same set of circumstances.

"The learned Judges then intimate an opinion that the language of section IX ought to be cut down independently of any canon of construction, and simply because, if literally construed, it would extend the power of Courts of justice beyond their proper and well-understood sphere. And they refer to the case of a School Board and a Railway Clearing Committee. But I may be permitted to express a doubt whether the sphere of the Company's Courts, as constituted fifty years ago, seemed to Indian statesmen of that day quite the same thing as the sphere of the Courts he is familiar with may seem to a lawyer of the present day. At all events, I cannot understand that anything is legally beyond the sphere of Courts of justice which the law enjoins them to do. If Lord Selborne had found an Act of Parliament which said that a School Board should decide in the first instance, and then that any person aggrieved might file a Bill in Chancery, he would doubtless have done his best to decide the case, even though it might seem to him that the law had thrust upon him uncongenial duties, far removed from the proper sphere of a Court of justice. The English Judges referred to had not got to deal with this very intractable Regulation which makes all Collectors' decisions controllable by the Civil Courts.

"The plain truth is, that the Regulation does throw into Civil Courts controversies which are not suitable for them, at all events as they are now constructed, and that is the very reason why we come to alter the law. It is a gratifying thing to find that some eminent Judges would alter it if they could in the same direction, but that is the work of the legislature, not their work. We must remember that Judges cannot make law; they can only declare and apply it. It so happens that quite recently in the course of my duty of reading Law Reports, I have read a decision of the Privy Council in which they express disapproval of the practice of introducing new law because the existing one appears to the Judge to be impolitic. Referring to a case decided in India, they say—

"'The Chief Justice observes—'The recognition of the right to redeem was, having regard to the previous decisions of the Sadr Adalát, perhaps somewhat a strong measure. It had,

however, for a long time previously, been considered a desirable course to adopt, and eminent Judges of the High Court, who had formerly been Judges of the Sadr Adalát, regretted that their predecessors had, for the most part, enforced the conditions for purchase in *gahan lahán* mortgages, as such a course had been found to promote most oppressive and grasping conduct on the part of money-lenders in the Mofussil.' It would be difficult to have a more candid admission of the assumption by the Courts of the functions of the legislature.'

"They then comment upon this, and show that the Judges, who cannot deal with the matter comprehensively and with reference to all its bearings, as the legislature can, must take the law as they find it, and not attempt to alter it piecemeal by their decisions.

"Now I think that the law propounded by the learned Judges is a great improvement on the Regulation as it stands; that it is dictated by thorough good sense and good policy; and the only fault I find with it is that, as the line is at present drawn, it does not exclude from the Civil Courts some classes of cases that ought not to come before them. But for the reasons I have assigned, I fear that if the question were properly argued before them, as it has not been, the Courts would be constrained to admit that they have more jurisdiction than they now think, or if they did not, that the Court of Appeal would take a different view.

"But suppose the case to be otherwise, what would be the result of omitting to pass a law on the ground that the view propounded by the Judges is sound? We have it admitted on all hands that the literal construction of the Regulation is to give unrestricted jurisdiction to the Civil Courts over the Revenue officers. This literal construction has to be cut down either by some highly artificial handling, or by a Judge's estimate of what is the proper and well-understood sphere of a Court of justice. Now I think that lawyers will agree with me that of all the glorious uncertainties of the law, none is more glorious than the construction of a document when once the plain literal meaning is thrown overboard. In what manner the *disjecta membra* shall be pieced together again, what does and what does not fall within the sphere of a Court of justice, are questions on which, as sure as night follows day, one Judge will differ from another. The two learned Judges who have delivered the Kabilpur judgment would confine their jurisdiction to claims of exemption. Even that seems to me very vague, for all claims are claims to pay something less, and it would require many decisions before it was settled what kind of claim is cognizable as a claim of exemption and what is not. But there are a number of other things besides exemptions, which may be subjects of controversy. There are certain 'established principles,' as our Ahmadábád friends remind us, mentioned in the Regulation as 'applicable to different descriptions of land.' I should say that if any jurisdiction was clearly and indisputably conferred on Civil Courts by section IX, it was a

jurisdiction to enforce these 'established principles.' And I hardly see what controversy might not be brought in, at least with a very little astuteness in framing the plaint, under these expressions. It is clear that the Ahmadábád gentlemen think they open a very wide door indeed. I think so too. The litigation uncertainty and confusion which would ensue before the law got settled on a clear footing would be very great. And though I fully believe that by a long continued application of the same good sense that now prevails in the Civil Courts, the law would, after a great many arguments and decisions, get ultimately settled on a footing that would leave us little to complain of, the result might be otherwise. Indeed, at the present moment, those who delivered the Kabilpur judgment would draw the line of demarcation between Civil Courts and Revenue authorities in what I venture to think the wrong place. It is their opinion that the Canara case ought to have fallen, as undoubtedly it did fall, within their jurisdiction; whereas it seems to me that the question there raised was a broad political question, to be dealt with by the executive or, if necessary, by the legislature, rather than by the methods of a Court of law. They think the same of Wamnaji's case; whereas in that case the primary question was whether the Collector had or had not applied to the plaintiff's land the right principles of assessment. And apparently they think very lightly of the evil of having Revenue officers vexed with litigation about a quantity of business details, which, if a system is to work at all, must be left to those who work it.

"I have in my hands a letter from a Revenue officer, Colonel Francis, in which he states the inconvenience of the present law. He gives a list of six recent cases. Of these he says:—

"'In one case, the Court is required to decide whether the Warkas lands have been properly measured, in another, to declare whether we are authorized in rejecting the fractional parts of a rupee' (he should have said of an anna) 'in fixing the amount of assessment, in another whether Warkas lands should be measured into Pot Nos., and in another, whether the cost of boundary-marks has been properly apportioned. All these involve questions of detail affecting the manner in which the survey operations are carried out, and in some cases, considerations of a purely professional nature, and it may safely be said that the Court cannot possibly possess the knowledge requisite to give a right judgment in such matters.'

"He then speaks of the case of Wamnaji, which has been so often mentioned, and shows that it involves disputes on the value of rice, ricestraw, and so forth.

"Upon this letter a gentleman who thinks the present law ought to be preserved makes the criticism I am about to quote—

"'This letter contained an indictment against the Civil Courts for allowing persons to appeal to them against the 'proceedings of the Survey Department in matters relating to the

measurement, classification and assessment of the land,' and he appended to his letter a statement of six suits of the above nature which have been filed in the District Court of Rátnagiri. But on referring to these, it appears that in five out of the six cases the Courts decided against the plaintiff and in favour of Government, while the sixth case was the famous one of Wamon Sudasiv, which failed to be decided in the favour of Government only owing to the want of ordinary care and attention on the part of the Collector and Survey Commissioner!'

"Now I quote that, because it is a not unfair specimen of some lines of criticism applied to this Bill, and I propose to make one or two observations upon it. In the first place, a critic of this kind appears to think that, if you can only win your case after taking pains and spending time and money enough, it is the same thing as if you cannot be sued at all. It seems that in every one of these cases the officer was right; for it is admitted that in Wamnaji's case the Court was misled by the plaintiff. But in every one of the cases time, labour, money, was expended on both sides. If the plaintiffs had succeeded, there would be something to show for all this. But they have failed, except in the one case in which the Collector thought there was no jurisdiction, that he was not bound to show to the Civil Courts that he had applied the principles of assessment rightly, and, relying on that plea, left the case undefended on the merits, so that the plaintiff walked over the course. Nothing could more completely justify the second main reason given by Sir B. Ellis for this Bill, namely, that the machinery of the Survey and Settlement Department was likely to be disorganized by a quantity of trifling suits. When you add that the trifling suits mostly end in nothing but costs to the suitors, and an occasional injustice owing to oversight, it seems to me that instead of diminishing the force of the reason, you have considerably augmented it.

"There is another part of the same criticism to which I object. Colonel Francis' letter is called an indictment against the Civil Courts, and this again is only an illustration of the vehement personal feeling with which this measure has been taken up, as though it were an attack on the able gentlemen who conduct the judicial business of the province. I really cannot conceive how any one who will consider what this measure is, and on what reasons it has been based, can allow himself to use such language. There is no indictment against the Civil Courts in Colonel Francis' letter, unless an assertion that some Judge made a sad mistake about the price of rice-straw, can be considered such. His complaint is that the law sets them to do unsuitable work. There is certainly no such indictment in our proceedings, for no one here has suggested that the Civil Courts have done anything they ought not to do. When I last spoke, I took the opportunity of saying that I found fault with the law, but that the Courts were blameless. Having now read some more of the literature

of this subject, I can say something more. Probably the judicial officers will not much value my opinion, but I am speaking to the Council, not to them, and I want the Council to know the truth about the spirit in which this measure has been promoted.

"On examining the cases mentioned by Colonel Francis, I find that the Judges who tried them—three different Judges—all followed much the same course: they took evidence on the whole case as they were bound to do; but when they found that the dispute merely came to one of opinion between man and man, or of judgment how proceedings should be conducted, they held that the officer's judgment must prevail, and that the plaintiff had no case to bring into Court. That seems to be a most reasonable way of dealing with a difficult jurisdiction. We must, indeed, bear in mind that none the less was jurisdiction exercised, and that the Collector had to appear, plead and give an account of the whole of his proceedings. It is one thing to be wholly debarred from enquiring into a given subject, and quite another to hold that, after all enquiry has been made, you won't interfere with mere matters of opinion or discretion. A judicious administration of an unsuitable jurisdiction very much diminishes the mischief, but does not destroy it. Still I think that in these cases, and in every other case, now a good many, that I have read about the jurisdiction of the Civil Courts, they have shown great sense and moderation. It is this very good sense and moderation with which they have worked the law, as I believe, that has prevented its defects from becoming intolerable much sooner. They have too wide a jurisdiction, and uncongenial duties are thrust upon them; but that is not their fault, it is the fault of the law which we are asking you to amend.

"Now I trust that the Council will be of one mind that there must be some line drawn to abridge the excessive jurisdiction of the Courts, and that the matter is one to be settled by the legislature, and not by a great number of judicial decisions. If so, the only question is what line shall we draw. This has always seemed to me a most difficult thing to decide, and am sure we have not been disposed to dogmatize about it. We have propounded a plan and invite criticism upon it. Our language has been;

Si quid novisti rectius istis,
Candidus imperti; si non, his utere mecum.

"I am sorry to say that we have received very little assistance from without. Of course nobody ever is eager in support of a tax bill, though many are eager against it. So it is with a Bill intended for the more efficient collection of the revenue. We have been loudly called upon to leave the law alone.

but have had no better dividing lines of jurisdiction pointed out to us. So the different branches of Government, and the members of the Committee have discussed the matter with one another, and have done the best they could to strike a fair and reasonable line. The Bill was considerably modified in October last, and it has been modified again now, with the effect of giving considerably more jurisdiction to the Civil Courts than it did when it was first framed.

"I noticed before one of the most favourite arguments against the Bill, namely, that it made men judges in their own cause, which was said to be contrary to a fundamental principle of all law. I am glad to see that this particular assertion has been dropping out of the controversy, and if a deathblow has been administered to one fallacy, that is a comfort. I have indeed seen myself mildly and good-humouredly bantered in some public prints for being so simple as to think that Collectors are under as strong temptations to lower the revenue unduly as to raise it unduly. I still retain however that simple belief, because my experience supports it; and I find myself reinforced by a most unexceptionable witness, being no other than the High Court of Bombay. In the course of the judgment from which I have quoted so much, they say this—

"'In the Canara case, on the other hand, it was manifest that the opposition offered to the survey and assessment, and the consequent litigation, were, in a great measure, due to the sympathy of some of the Collectors having been excited in favour of the landholders, by imperfect investigations and erroneous views as to the authority and acts of Sir Thomas Munro. We are not for a moment to be understood as saying that those Collectors intentionally sought to raise that opposition or litigation, but their opinions, confidently expressed in Reports to Government, were on record in their kachahrís, and information, contained in the archives of a kachahrí or other public office in this country, has a singular facility in making its exit if there be any person interested in assisting it to do so. Consequently the views of those Collectors were well known throughout the province of Canara. If the decision of the Canara case had been left to those officers, or had it been based on their reports, the result would have been the opposite of what it was in Court.'

"If that does not prove that the Revenue officers have their sympathies with the people they assess, I don't know what it does prove. The Collectors would have taken off a burden which the Court decided was to be laid on.

"I am not sure whether it is a revival of the same fallacy in another shape, or whether it is a totally new one, because it is couched in such very vague terms; but we are now told from one or two quarters that our proceedings are in violation of all principles of jurisprudence.

"I wish the gentlemen who say so would have pointed to the system of jurisprudence which they have in their minds. The only way I know of learning principles of jurisprudence is to look and see what is embodied in actual laws.

Now we are dealing with the subject of revenue; and I shall be surprised if our opponents can show us any system of revenue jurisprudence, except this Bombay Regulation, which is not based on the principle of protecting Revenue officers from litigation for acts done within the sphere of their duty. I referred before to the case of income-tax. The principles of jurisprudence recognized there are that Revenue officers (in India Collectors, in England Commissioners) and not the Courts of law, shall settle disputes between the tax-payer and the tax-collector. Perhaps the case of land-tax may supply even a closer illustration. When the land-tax was made perpetual, the maximum amount for given localities was fixed by law. Then assessors were appointed to distribute that amount over different properties. From the assessors there is an appeal given to the Land-tax Commissioners; and then it is—

"'declared, that all appeals once heard and determined by the said Commissioners on the day appointed shall be final, without any further appeal upon any pretence whatsoever.'

"And again—

"'all questions and differences which shall arise touching any of the said rates, duties, and assessments in *England*, *Wales* and *Berwick-upon-Tweed*, or the collecting thereof, shall be heard and finally determined by the said Commissioners, in such manner as by this Act is directed, upon complaint thereof made to them by any person or persons thereby grieved, without further trouble or suit in law in His Majesty's Court of King's Bench, or any other Court whatsoever.'

"Now there is the most complete protection against litigation given to the officers acting within the sphere of their duties. If they proceed to assess a property not within the scope of the Act at all, the Civil Court may take cognizance of such a case. So may the Civil Courts according to our Bill. Or supposing they assess a property expressly exempted by the Act, such as the endowment of a hospital, the Civil Court may interfere. And so it is according to our Bill. In each case, if the officer acts beyond his sphere, he may be sued; if he keeps within it, he may not be sued, except that even then section 5 of our Bill permits him to be sued under certain circumstances.

"Of course we have not and cannot have an exact analogy between the two countries. In India it is a strong additional reason for exempting Revenue officers from civil suits that the land-revenue is levied at the discretion of the Ruler. And when we come to claims of exemption, the analogy fails to a greater extent. For, in England, there are no exemptions except those which are provided in the Statute itself, and we agree that of Statutes Civil Courts are the best interpreters. In India the circumstances are totally different. Exemptions are claimed under every conceivable species of circumstances,

of all degrees of remoteness, obscurity, lawlessness, or corruption; and it is distinctly the Revenue officer's ordinary duty in India, and a very important part, too, of that duty, to sift to the bottom every claim of exemption, otherwise the public treasury would be seriously encroached upon. To find then whether, in the case of exemptions, we are violating principles of jurisprudence, we must turn to the study of our Indian laws, for the phœnomena exist only in India. Our opponents have not told us where they find the violated principles. Under Native Rulers the process used with regard to exemptions was a very simple one: for though they might have been created by formal grant, and with expressions denoting absolute perpetuity, 'for ever,' 'from generation to generation,' 'as long as the sun and the moon endure,' they were usually treated as extinct by the death of either grantor or grantee, and sometimes revoked without waiting for any such death. We do not act in nearly such summary fashion; but an officer must have regard to the origin of privileges against the public right, and to the knowledge of all parties how precarious a possession they were. The objectors to the Bill should show how its dealing with exemptions violates such principles as regulate our jurisprudence in other parts of India. They should show, for instance, in what other part of India such suits as the 1,000 Canara suits could have been instituted. Certainly such a phœnomenon has not occurred elsewhere: we say it could not occur, and I believe that assertion to be correct.

"The plain fact is that it is this Regulation which violates the principles of jurisprudence prevalent elsewhere, and it is we who are seeking to introduce sound principles which shall be in harmony with the requirements of the case.

"After all, one of the great difficulties which our opponents have to meet, and which they never attempt to meet, is this. Are they prepared to say that in this comparatively small corner of India, our legislation is right, and that it is wrong everywhere else? They say the people are content; but they are not more content here than elsewhere. And the Revenue Department of the Government are not content; they find that the revenue suffers; they believe that injustice is done to the public at large owing to the unfamiliarity of the Civil Courts with these intricate revenue matters; they find their time taken up in defending petty revenue suits, mostly decided in their favour, though they have great difficulty in giving proper attention to them; they find that much cost is incurred and their business grievously disturbed. Our opponents have never attempted to compare one part of India with another, not even the two great divisions of Bombay, or to tell us what advantages exist

in the old provinces of Bombay to compensate for the mischiefs I have mentioned.

"I am extremely sorry to have detained the Council so long, but the subject is one of difficulty, and it has been overlaid with such an amount of misapprehension, exaggeration, fallacy and error as cannot be removed except at some length. Here is our Bill. It is founded on the broad principle of protecting the Revenue officer when he is acting within the sphere of his duty. It treats the investigation of claims of exemption or privilege as being within the sphere of his duty, but here it makes exceptions in favour of the jurisdiction of Civil Courts in several cases adapted to ordinary legal methods. In framing it, we have been guided partly by the law of England, partly by the law of other parts of India, partly by the peculiar circumstances of Bombay. It is utterly untrue that the Bill is animated by hostility to Civil Courts. It leaves to the Civil Courts of Bombay a large amount of jurisdiction which Civil Courts do not possess in other parts of India. It brings within that jurisdiction a very large area which is now completely shut out from it, namely, the new provinces of Bombay. It does not affect questions regarding ownership of land, nor rent-suits. It may be that we have not struck quite the best dividing line of jurisdiction. I am not sanguine enough to suppose that we have not made mistakes which the course of business will expose. But with all shortcomings, I confidently commend this Bill to the Council as a very great improvement on the existing law."

His Excellency THE PRESIDENT said :—"I wish to make one or two observations on this Bill. The first is that our hon'ble colleague Mr. Hope, in the remarks which he has addressed to the Council, very properly declined to dwell upon certain observations which have been made on the subject of his own connection with the Bill. I wish, however, in justice to him, to express my own feeling upon the matter. I entirely agree with my hon'ble friend Mr. Hobhouse, in regretting that this Bill should have excited a kind of personal feeling on the other side of India, and I still more regret that, in certain quarters, observations have been made with regard to our hon'ble colleague Mr. Hope, which I consider altogether unjustifiable.

"As regards Mr. Hope's connection with this Bill, it must be recollected that the Bill was originally brought before the Council, at the instance of the Government of Bombay, by our late hon'ble colleague Sir Barrow Ellis, who introduced the measure to the Council and supported it with that knowledge of the revenue affairs of the Bombay Presidency which he possesses in a greater degree perhaps than any other man.

"After Sir Barrow Ellis left the Council, Mr. Hope gave his assistance on the Select Committee, and on several occasions when the Bill has been discussed. He has always been ready to consider with impartiality all reasonable objections urged against the Bill, and we are greatly indebted to him for his assistance in the consideration which the Council has given to the Bill. Mr. Hope's connection with the Kabilpur case tried by the High Court of Bombay, has been alluded to by one of the members of the Government of Bombay. Upon that matter Mr. Hope has, in the proceedings before the Council, made some observations to which I wish to give greater prominence by reading them now, as I think they are perfectly proper and right. Mr. Hope says that the Kabilpur case is one 'requiring an enormous amount of technical knowledge of accounts, tenures and past revenue history for some two hundred years; that a series of experienced Revenue officers—1st Assistant Collector, two different Collectors, Revenue Commissioner, Chief Secretary and Revenue Member of Council, the latter advised by the Legal Remembrancer and a Judicial officer on special duty,—took one view of it, and that the District Judge and a Bench of the High Court, consisting of the Barrister Chief Justice and a Civilian who entered the Judicial department when he had been eighteen months in the country and is totally ignorant of revenue matters, took another view of it.'

"That statement shows that the observations made by a member of the Government of Bombay, reflect (if a difference of opinion on so complicated a case can rightly be considered to be a subject of blame at all) as much upon his own colleagues, and upon the constituted advisers of the Government of Bombay, in revenue matters, as upon Mr. Hope in the performance of his duty as Collector of Surat. Mr. Hope, however, has very properly explained that his own personal concern in the Kabilpur case is immaterial to the issue which is before the Council. The Bill must be considered on its merits, and its merits alone, and the question of its merits, so far as regards its principal features, has been so exhaustively dealt with by my hon'ble friend Mr. Hobhouse on the present occasion, that it leaves but little for me to say. The Bill was originally introduced in consequence of the existence of a certain Regulation—No. XVII of 1827—which extended to a part of the Bombay Presidency. The ninth section of that Regulation runs as follows:—

"'The Collector's decision upon any question arising out of the provisions of the 'preceding sections' [which refer to the assessment of the land-revenue] 'shall, in the first instance, be obeyed and acted upon as the rule. But if any person should deem himself aggrieved by any such decision, he may either present to the Collector a petition, addressed to Government, praying for redress, or may file an action against the Collector in the Civil Court, under the ordinary rules, or he may pursue both methods at the same time.'

"It was the opinion of the Government of Bombay, of Sir Barrow Ellis, and of every one, so far as I am aware, who, until recently, has expressed an opinion upon the construction of this Regulation, that under it all matters connected with the assessment of the land-revenue in that part of the Bombay Presidency over which the Regulation extended might be brought before the Civil Courts. That opinion was confirmed, as has been shown by Mr. Hobhouse, by cases in which various questions relating to the assessment of the land-revenue were actually brought before the Civil Courts. No doubt the Courts have dealt with such suits very wisely, and have held that the plaintiff had no case for relief when all he could shew was that of two courses fairly open to the Collector he had followed the one which the plaintiff did not think right; but this seems to me to be quite a different thing from a refusal to entertain such suits at all. It was held by the Bombay Government, and by the Government of India, that it might occasion very great inconvenience and embarrassment if this jurisdiction was maintained, and a Bill was therefore introduced for the purpose of preventing the Civil Courts from dealing with those particular matters connected with the assessment of the land-revenue, with which the learned Judges could hardly have sufficient practical knowledge to deal satisfactorily, and which are not dealt with by the Civil Courts in other parts of India, the most important matters being 'the amount or incidence of any assessment of land-revenue,' the 'mode of assessment, or the principle on which such assessment is fixed,' and 'the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement,' this class of cases being placed under head (*b*) of clause 4 of the Bill now before the Council.

"It appeared to the Government of India that if the law, as we understood it, remained as it was, the whole assessment of the land-revenue of a district might be brought before the Civil Courts to the great embarrassment of the Government and of all parties concerned. The other principal class of cases which are excluded from the Civil Courts are—

"claims against Goverment—

to hold land wholly or partially free from payment of land-revenue, or

to receive payments charged on or payable out of the land-revenue.'

"During the two and a half years that this Bill has been under consideration, great pains have been taken to provide that all such questions of right connected with these claims as are properly cognizable by the Civil Courts should be admitted for trial in those Courts; and I believe that Members of the Council will be satisfied with the proviso contained in the latter part of the fourth clause

of the Bill, which expressly reserves to the Civil Courts cognizance of claims for exemption from land-revenue of the kinds specified; in fact, the Council have taken every pains to admit to the Civil Courts all cases in which it is right and desirable that they should possess jurisdiction, and to confine the jurisdiction of the revenue authorities—which jurisdiction, I may observe, is substantially analogous to the jurisdiction given to officers connected with the revenue in England in certain cases — to those practical questions which such officers alone are the best able to decide.

"That is the shape in which the Bill now stands.

"In respect to the extra-judicial opinion which has been given by the High Court of Bombay, upon the construction of Regulation XVII of 1827, I so entirely concur with everything which has fallen from my hon'ble friend Mr. Hobhouse, that I would only say that if the opinion of the High Court be right, it affords a strong argument in favour of the most important portion of the Bill which the Council are now asked to pass, because, as I understand it, the construction put upon the Regulation by the High Court would confine the jurisdiction of the Civil Courts very much in the same manner as is done by section 4 (*b*) of this Bill. But I must express my entire concurrence with Mr. Hobhouse that this construction of the Regulation is contrary to its plain language. So far as I can understand the argument used by the learned Judges, they have restricted that language by a distributive construction which the context apparently does not warrant, and this interpretation is to my mind so doubtful, that I think it most desirable to do what is proposed to be done by this Bill, namely, to make the meaning of this Regulation perfectly clear by a distinct enactment of the legislature.

"If, therefore, Members of the Council agree, as I do, with the opinion of my hon'ble friend Mr. Hobhouse upon this matter, namely, that it will not be safe to leave the law in a state of doubt, which I believe would be the case if we do not proceed with this Bill, and if they are satisfied that every pains have been taken to admit the jurisdiction of the Civil Courts in these matters, wherever it can properly be exercised, I have no hesitation in expressing my opinion that they will do well to pass the Bill into law."

The Motion was put and agreed to.

The Council then adjourned to Tuesday, the 4th April 1876.

CALCUTTA,
The 28th March 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department.

Government Central Press.—No. 533 L. D.—7-4-76.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 4th April 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding*.
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C.S.I.
The Hon'ble Sir W. Muir, K.C.S.I.
The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.
Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.
His Highness the Mahárájá of Vizianagram, K.C.S.I.
The Hon'ble John Inglis, C.S.I.
The Hon'ble T. C. Hope.
The Hon'ble Rájá Nárendra Krishna Bahádur.
The Hon'ble F. R. Cockerell.

INDIAN MUSEUM BILL.

The Hon'ble MR. BAYLEY asked for leave to postpone the motion that the Report of the Select Committee on the Bill to provide for the management of the Public Museum at Calcutta, be taken into consideration.

Leave was granted.

OBSOLETE ENACTMENTS BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill for the repeal of certain obsolete enactments.

The Council then adjourned to Tuesday, the 11th April 1876.

CALCUTTA,
The 4th April 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department.

Government Central Press.—No. 10 L. D.—7-4-76.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 11th April 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal.

Major-General the Hon'ble Sir H. W. Norman, K.C.B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C.S.I.

The Hon'ble Sir W. Muir, K.C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

His Highness the Mahárájá of Vizianagram, K.C.S.I.

The Hon'ble John Inglis, C.S.I.

The Hon'ble T. C. Hope.

His Highness Mahárájá Iswariparshád Náráyan Singh Bahádur, of Benares.

The Hon'ble D. Cowie.

The Hon'ble Rájá Nárendra Krishna Bahádur.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

PRESIDENCY BANKS BILL.

The Hon'ble SIR W. MUIR presented the Final Report of the Select Committee on the Bill for constituting and regulating the Banks of Bengal, Madras and Bombay, and moved that it be taken into consideration. He said that since the first Report had been presented certain other suggestions and amendments had been brought under the consideration of the Committee. These had all been carefully disposed of; and it would be seen from the present supplementary Report that a few amendments had been made in consequence. These were all unimportant. There was only one which deserved special mention, and that was the power provided in section 67, for the winding-up of the Banks, under certain conditions, at the instance of the shareholders. This provision had been introduced at the desire of his hon'ble friends

the Mercantile Members of the Committee. Not that any one anticipated such a contingency; but rather for the sake of completeness and because a similar provision was ordinarily made in deeds of the nature of the proposed Act. It might confidently be hoped that there never would be any occasion to exercise the power.

Every point and suggestion in connection with the Bill had received the most careful and patient attention, and he believed had been satisfactorily disposed of; and the measure might now be looked upon as complete. He took the opportunity of again thanking Messrs. Bullen Smith and Cowie for the valuable aid and counsel they had rendered as Members of the Committee.

This would be one of the last legislative measures which, if the Bill were passed to-day, His Excellency would be required to give his assent to; and he (SIR W. MUIR) felt sure that it would be a satisfaction to His Lordship to have seen the Bill passed into law during the period of his Viceroyalty. And although the measure itself would not be launched under the personal direction of His Excellency, still in all points respecting the terms of agreement and other arrangements concluded with the Presidency Banks, the Financial Department had enjoyed the benefit of His Lordship's experience and advice. They had endeavoured to consult the convenience and interests of the Banks in all these arrangements; and he (SIR W. MUIR) trusted that the basis on which these arrangements had been made was such as would secure in the conduct of their business the utmost degree of success compatible with the inevitable dissolution of the connection which had heretofore subsisted between the State and the Banks. His Excellency would, he was sure, watch from home the progress of the Banks under their new charter with interest; and we might trust that under that charter a long and prosperous career lay before them.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA said the Presidency Banks Bill would become the law of the land from this day. It was framed by an efficient officer of Government, and its provisions had been carefully considered by able officials and the influential merchants who were members of this Council. This measure, the result of their joint wisdom, was expected to prove beneficial to the public at large. The view taken by the Rájá when this Bill was introduced into the Council was opposed to their opinion, and if in practice the working of the Banks proceeded in a satisfactory manner under the management of non-official directors, he should then be agreeably surprised, although he did not hesitate to affirm that honourable men like the Mercantile Members of this Council were able to manage the affairs of Banks as successfully and efficiently as any other competent individual.

The Hon'ble MR. BULLEN SMITH said that as a Member of the Select Committee, he had an opportunity of expressing to his hon'ble colleagues in Committee his opinion on the Bill, and it was therefore hardly necessary for him to trouble the Council with any remarks; but intimately connected as he was with one of the Banks, it would hardly be right for him to allow it to pass with a silent vote. He desired to bear testimony to the correctness of Sir W. Muir's statement in regard to the questions discussed, and the great care with which everything connected with the Bill had been considered in Committee. Nothing could have exceeded the care which had been bestowed on the Bill. Various inconsistencies and undue restrictions which existed in the old charters had been modified in the Bill as it now stood. He thought the Bill a good one, and that it might be expected to work with advantage to the institutions to which it applied. He had only, in conclusion, to join Sir W. Muir in expressing the satisfaction he felt that a measure which had been a good number of years before the Government and the Council, had a prospect of being passed into law before His Excellency left these shores.

His Honour THE LIEUTENANT-GOVERNOR said he should like to ask one question which he believed could be satisfactorily answered; but for the satisfaction of certain Bengal officers and the public in general, he should like to ask a question with reference to section 23 of the Bill. That section provided that "the Bank shall not be bound to recognize any legal representative of such proprietor or shareholder other than a person who has taken out from a Court having jurisdiction in this behalf probate of the will or letters of administration to the estate of the deceased." Now, he believed, subject to correction by their hon'ble colleague in charge of legislation, that these words would include the jurisdiction of Civil Courts; that was to say, that Mofussil Courts could grant probate under the wording of this section. He asked the question because, when the Bill was first drafted, it was thought by certain Bengal officers that the wording was so put that no Court except the High Court could grant the probate necessary in affairs relating to the Bank. He thought that would be very objectionable, inasmuch as it would centre business in the High Court and prevent Mofussil Courts from granting probates in this matter. He believed that the wording had been so amended as to admit of probates being granted by Mofussil Courts. He asked the question because, as he understood, there was a doubt in the minds of Bengal officers as to whether probate in the strict sense of the term could be granted by Mofussil Courts. He believed, subject to correction of the hon'ble member, that probate could be so granted. But it was desirable to clear up the point, and he thought that His Lordship would agree that if there was a question of a deceased shareholder

in the Bank, the heirs should be able to take out probate in the Mofussil and not be under the necessity of coming down to Calcutta for the purpose.

The Hon'ble SIR W. MUIR observed that the question was answered in the Report of the Select Committee. The second paragraph of the final Report said—

"As regards transmission of shares on the death of the shareholder, we have reconsidered our decision, and now have provided that, when by the death of any proprietor or shareholder his stock or shares shall devolve on his legal representative, the Bank shall not be bound to recognize any legal representative of such proprietor or shareholder other than a person who has taken out from a Court having jurisdiction in this behalf probate of the will or letters of administration to the estate of the deceased."

A District Court had under the Indian Succession Act (X of 1865) power to grant probate and administration.

His Honour THE LIEUTENANT-GOVERNOR asked why the Bill should exclude certificates under Act XXVII of 1860.

The Hon'ble MR. COCKERELL observed that certificates under that Act were limited to the collection of debts and the receipt of certain interest and dividends. It did not authorize the grant of probates or letters of administration, and it was never intended to apply to the decision of any claim of right to succeed to the estate of a deceased person or any part of it, such as a share in a Bank.

His Honour THE LIEUTENANT-GOVERNOR said that there was another question which he wished to ask, and it was in reference to section 9 of the Bill. It had been pointed out by several Mofussil authorities that the effect of clause (*a*) of that section when read with clauses (*b*) and (*c*) would be virtually to compel the Banks to make all their contracts, or nearly all their contracts, according to English law, and that under clause (*a*) they must be under the English law. By that provision, the Council threw upon Mofussil Judges of all grades the duty—to them a difficult duty—of deciding whether a particular contract which came before them ought or ought not to be made according to English law, and it required them to be acquainted with the English law regarding contracts under seal, which perhaps might be a good thing for them to know, but still was difficult. If that was the case, he submitted that it did throw a certain amount of uncertainty on matters regarding which there should be no risk of error. Again, there seemed to be apparently no particular reason why the Bank should be compelled to make most of its contracts according to English law. If a contract was to be executed partly in India and partly in England, or was executed within the local limits of the jurisdiction of the High Court, or if for any other reason it was

desirable to have a contract made according to English law, that would be right and proper. But if a contract related solely to property in India, and to parties in India, there seemed to be no reasonable ground why they should not make their contracts according to the Indian Contract Law, according to the law which regulated all other contracts and did not require instruments to be under seal. Why should the Bank be compelled to observe formalities for its contracts to which other parties resident in India were not subject? That was the legal point. But he understood, subject to correction of the hon'ble member opposite (Mr. Hobhouse), that some of the other incorporated Companies were subject to the same obligation. First of all, he would ask whether or not this section had the meaning, or was intended to have the meaning, which he was advised to put upon it. He should have thought that, according to the section as worded, the Bank might do one of three things. It might either make its contract according to English law if it saw fit: if it did see fit, it might fulfil all the formalities prescribed by the English law; or, secondly, it might make a contract according to the Indian Contract Act. If that was so, the Bank might exercise its own discretion whether it would make a contract according to English law or according to Indian law. Or, thirdly, it might make a contract verbally. But he now understood that the intention of the section was different; that the real effect of the section would be to compel the Bank to make almost all its contracts according to English law. If that were so, he would ask whether it was necessary to subject the Bank to all the formalities required by the English law of contract under seal. He submitted that it was not necessary to do so; that the Bank should have the option which every other party in the country had of making its contracts according to the Indian Contract law. If the Council were advised by the hon'ble member that other incorporated bodies were subject to the same restrictions, that was an argument for subjecting the Bank to those restrictions as to its contracts. Still His Honour could not help thinking that those restrictions were an inconvenience to the business of the Bank, and also inconvenient by compelling parties in the mofussil, who had dealings with the Bank, to make their contracts in Calcutta. He was advised that if the words "if made according to English law" were cut out in clause (*a*) of section 9, perhaps the difficulty would be obviated.

The Hon'ble Mr. Hobhouse said that in answer to his hon'ble friend the Lieutenant-Governor, he would first point out that His Honour appeared to have been advised that the provision as to contracts had a much greater extent than it actually had, both in respect of the number of contracts affected by the sub-section that referred to English law, and also in respect of the legal operation of the section. The only object of section 9 was to provide clearly what should be the formalities

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under which contracts should be entered into so as to be binding on the Bank With the substance of contracts it did not deal at all. Everybody must be aware that there was a great difference between corporate bodies entering into contracts and private individuals doing so, and that it was utterly impossible to give to a public body the same freedom of entering into contracts which the law gave to private individuals; for you could not possibly give to a number of aggregate wills the same freedom as to a single will. It was found necessary in all countries, certainly in England, to lay down rules by which it should be known whether a corporate body had entered into a contract or had deputed authority to those who had entered into a contract to bind it by that contract. The rules of English law had sprung up partly through decisions of the Courts and partly from provisions that had found their way into Partnership Deeds. Those rules again had been adopted by Parliament and passed into Acts of Parliament for the general regulation of Companies. Now, the contracts which were dealt with by this Bill were of three kinds. He would take them in the inverse order in which they came in the Bill. Under head (*c*) came all those little contracts which people were in the habit of making by mere words. For instance, a contract to hire a sweeper might be made by mere words; it might be made by any person who was authorized either impliedly or expressly to make it by words. If a contract was required to be made in writing, which some few classes of contracts were, then it should be made in writing by the person authorized by the Bank. And if a contract was required to be made under seal, as most solemn classes of contracts were required, then it should be made under the corporate seal of the Bank. In these cases the substance of the contract was not interfered with, but the Bill described the formalities by which it should be known whether the contract was binding or not. If this was altogether a new matter in India, there would be something to say for omitting all reference to English law. It was not, however, quite so simple a thing to alter the section as his hon'ble friend proposed, because if they were to strike out the words "if made according to English law to be under seal," they would immediately alter the classification of contracts, and they would have to make a new classification which might be a better one or might be a worse, but would at all events be something different from the existing classification. Now, this provision was imported into the Indian law in 1866, and all contracts made under the Indian Companies Act of 1866 were subject to this provision. The law therefore had been in force for ten years, or nearly so, and they had never heard of any practical difficulty arising from it. Now he submitted that there was no reason why those Banks should not be on the same footing, in this respect, with every other Company in the country which was subject to the Act of 1866. If the law was bad let us alter

it for all, but do not alter it until there was some proof that it was bad. The law was on our Statute-book in respect to other Companies, and it was the plainest and simplest course to apply it to these Banks. That was the simple reason why section 9 had taken this form. It must be proved that there was some practical inconvenience attending this law of contract before we set ourselves to alter it.

In respect to the other point about probates, the very object of the alteration introduced into the existing law was to give a wider range to legal personal representatives seeking to recover the shares of their testators or intestates. According to the present law, in Calcutta at least—he rather thought it was different in the other Presidencies,—a representative seeking to recover Bank shares must either put in a probate or letters of administration granted by a High Court or a certificate under Act XXVII of 1860 which would enable him to collect the debts of the deceased. The question might be very fairly raised whether the Bank should not stand on the same footing as everybody else who possessed assets of deceased persons. But the Bank had been placed in that exceptional position, and when they were so there was no Court which could grant probate except the High Court, and that was the reason why a grant by the High Court was required. But since that time the Succession Act was passed, and it enabled District Courts to grant probates and letters of administration which should constitute the persons named therein for all general purposes the legal representatives of the deceased; it was therefore right to make them the legal representatives of the deceased for the purpose of recovering shares in the Bank. A certificate, as rightly said by his hon'ble friend Mr. Cockerell, did not create the holder of the certificate the legal representative of the deceased; it only authorized him to perform one particular function, which was the collection of debts; and though under such circumstances the holder of the certificate might recover dividends that were actually due before the testator's death, he had not acquired any title to the share itself. Therefore it was a mistake to put the certificate on a level with probate, and this Bill had now put Bank shares on the same footing as other property when probate was granted.

His Honour THE LIEUTENANT-GOVERNOR would like to ask why a holder of a certificate under Act XXVII of 1860 should not be competent to collect dividends at the Bank as much as any other debt of the deceased. Why should the assets of the deceased man, when they happened to be in the shape of a dividend of the Bank, be placed on a different footing from any other asset? A certificate-holder in the mofussil might collect every other kind of debt, but he

could not collect a dividend of the Bank. Why had this sort of distinction been introduced in reference to the Bank ?

The Hon'ble MR. COCKERELL observed that the law laid down by section 8 of Act XXVII of 1860, as to the right of a certificate-holder to receive dividends, was wholly untouched by the present Bill.

His Honour THE LIEUTENANT-GOVERNOR would ask one other question, subject to His Excellency's permission, whether by the existing law the Banks were bound to seal their contracts according to the English law.

The Hon'ble MR. BULLEN SMITH said there were certain instruments which, according to the existing practice, did not require a seal, but to all the more important instruments the seal of the Bank was attached in the presence of certain officials.

His Excellency THE PRESIDENT observed that the discussion was becoming irregular. Questions should be put through the President and members should not be cross-examined as in Select Committee with the view of obtaining categorical answers. It struck him that the answer given by the Hon'ble Mr. Hobhouse, as explained by the Hon'ble Mr. Bullen Smith, was that the requirements of the Bill as to the execution of contracts were very much the same, if not entirely the same, as the existing practice. He believed that the question was thoroughly discussed by the directors of the Bank, and it was a question rather for consideration in the Select Committee than for discussion in Council.

The Hon'ble MR. BULLEN SMITH said that the directors of the Bank of Bengal had felt no difficulty under the existing practice, and had therefore asked for no different procedure.

The Motion was put and agreed to.

The Hon'ble SIR W. MUIR then moved that the Bill as amended be passed.

The Motion was put and agreed to.

OBSOLETE ENACTMENTS BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill for the repeal of certain obsolete enactments be taken into consideration. He said that this Bill was brought before the Council originally at Simla in the month of October last, and he then explained to the Council that it was one of those measures which were brought in for the purpose of enabling us to publish a revised edition of the Acts and Regulations now in force in India. He then mentioned that they hoped to have the General

Acts—by which he meant Acts which either extended to all British India, or which were extendible to all British India, or which affected the three Presidency Towns—published in the early part of this year. But the work was one of considerable magnitude, and, as usual in such cases, its completion took longer than was expected. They had got out two volumes, bringing the new edition down to the end of 1871, and they hoped in the course of three or four months to publish the third volume, which would complete the edition of the General Acts. They would then proceed immediately to publish an edition of the Madras Regulations and of the Acts, whether passed by the Governor General in Council or the local legislature, which related solely to the Madras Presidency. In the course of preparing these laws for publication many things were found which were mere dead matter on the face of the Regulations and Acts, and which would only disfigure a new edition. Therefore they put this Obsolete Enactments Bill on the stocks and took the opportunity of sweeping away some other matter from the General Acts and the Bengal and Bombay Regulations. Though there had been a great deal of that operation going on lately, still it was periodically found that either by the progress of time or the change of circumstances, or from oversight, there was dead matter in the Statute-book which might be removed.

He had more than once before now explained to the Council the principle upon which these enactments were framed, and this Bill followed the same principle as its predecessors.

The only objection he knew of to the passing of the Bill was that the Madras Government had intimated to them that they had it in mind to re-enact the Madras Regulations in a more modern shape; and they suggested that the revised edition should not be proceeded with until these Regulations had been put into the shape proposed. The answer MR. HOBHOUSE would make to that was that such a work was of considerable magnitude and importance, and would occupy a long period of time. He had no doubt that the Madras Regulations could not be recast without very minute communication with the local officers and people acquainted with the working of the Regulations,—probably a great many debates in Council, and long and laborious work in Committee. All that work would not be interfered with by this new edition of the Madras Regulations and Acts, but, on the contrary, would be much facilitated, because the draftsman would have under his eye, in one single volume, the whole of the living Madras Regulations and the whole of the living Madras Acts. Therefore the Committee felt that they were not standing in the way of the Madras Government, but were assisting it to do its work. Then the only question was whether it was worth while to pass this Bill and

publish the new edition. He thought it was worth while to complete a useful work of which a great deal had been done: because they were always liable to lose the man who was charged with its execution, and then his labour was wasted. That remark was applicable anywhere, but peculiarly so to India; and it applied to both sides of the business. In Madras they might be delayed by such an accident, and so their work might be prolonged beyond their expectation. Speaking for the Legislative Department, Mr. Stokes had got the new edition well in hand, and if any accident should call him away, the labour which he had bestowed on it would be lost. For these reasons MR. HOBHOUSE would urge the Council not to delay the passing of the Bill, but to pass it in the form in which it was presented by the Committee, to enable the Legislative Department to publish a more correct edition of the Madras Regulations and Acts than they could otherwise publish.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

MERCHANT SEAMEN'S BILL.

The Hon'ble MR. HOBHOUSE asked for leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the law relating to Merchant Seamen.

Leave was granted.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Mr. Cowie and the Hon'ble Mr. Bullen Smith be added to the Select Committee on the Bill to amend the law relating to Merchant Seamen.

The Motion was put and agreed to.

PRESIDENCY MAGISTRATES BILL.

The Hon'ble MR. HOPE asked for leave to postpone the presentation of the further Report of the Select Committee on the Bill to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency Towns.

Leave was granted.

LORD NORTHBROOK'S DEPARTURE.

Major-General the Hon'ble SIR HENRY NORMAN, addressing His Excellency the President said:—"I trust I may be permitted on this the last

occasion on which we shall have the advantage of Your Lordship's presence here, to express the regret entertained by the whole Council at Your Lordship's departure, and our earnest hope that in England, with renewed health and vigour, Your Lordship will be able, as we know you will be willing, to render important services to the interests of this country."

His EXCELLENCY THE PRESIDENT replied:—"General Norman, I believe that the observations which you have made are in accordance with the practice on former occasions, otherwise, in my position of President, I should have felt it my duty to call you to order, as there is no motion before the Council. However, in the conduct of legislative assemblies much weight is always attached to precedent, and therefore I did not think it my duty to interpose.

"I am very grateful for the expression of your good wishes on behalf of yourself and of the Members of Council. It has been a great pleasure to me to perform the duty which devolves upon the President of this Council. The laws brought before us for consideration have been most carefully prepared previous to their introduction. Their consideration by Select Committees of the Council has been most attentive. Members of Council, whether official or non-official, have devoted great time and labour to this important duty. Both in Select Committees and in the discussions which have taken place in Council, I do not think that any legislative assembly could have shown a greater desire to arrive at correct conclusions upon all questions brought before them, and to give due weight to all the opinions which have been expressed, although those opinions might not have been represented by a majority.

"I can call to mind no instance in which the view held by a minority has not been most fully and carefully considered before the Council have arrived at a conclusion.

"I beg to tender my most cordial thanks to all the Members of Council for the support which I have received from them upon all occasions in the conduct of the business that has come before this Council."

The Council then adjourned *sine die*.

CALCUTTA,
The 11*th April* 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department.

Government Central Press.—No. 87 L. D.—10-5-76.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., Cap.* 67.

The Council met at Government House on Thursday, the 22nd June 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble J. F. D. Inglis, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble F. R. Cockerell.

PRESIDENCY MAGISTRATES BILL.

The Hon'ble MR. HOPE presented the further Report of the Select Committee on the Bill to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency Towns, and moved that the Bill be published in the *Gazette of India,* and in the Gazettes of the several Local Governments.

He said that on the last occasion when he had the honour to address the Council on this subject, in presenting the previous Report, he pointed out the differences between the Bill then laid on the table and its predecessor. The most essential characteristic of the Bill as then presented was, that it embodied, *in extenso,* the whole of the provisions of the Criminal Procedure Code applied to Presidency Towns, which previously had been applied by simply quoting the sections in the schedule. The only alteration at all of importance was a slight improvement in the record, by which Magistrates, in appealable cases, were required to state their reasons for a conviction and to give a brief summary of the substance of the evidence on which they had based it. At the same time he had intimated that

as the Bill had been, in its then existing form, for about eleven months before the public, and no objections had been raised to its provisions, it was proposed to proceed with it in the course of about a month. It very soon, however, became apparent that the presumption that "silence gives consent" was premature in this instance, and that, in fact, the Bill had been entirely overlooked by the public, and by many who were materially affected by it, and that there were strong objections entertained to various portions of it in different quarters. Under these circumstances he need hardly say that the intention to push on the Bill immediately was abandoned, that all the suggestions and objections which were made were carefully considered by the Committee, and that, in consequence, it was not until the present time that the Committee were in a position to report further upon the subject. This delay he could not consider otherwise than with unmixed satisfaction, not only on account of the general expediency of allowing ample time for the consideration of all suggestions and objections that might be made, but also on account of the great amount of really valuable matter which had been laid before the Committee in consequence. The Report which he was now presenting would speak for itself, and at very considerable length. He need hardly say that in the case of a large measure of this kind, the material alterations in which were summarized in no less than twenty-seven paragraphs, it was scarcely to be expected that every Member of the Committee should entirely concur in every one of the separate matters noticed. For his own part, he could only say that he should be sorry to be considered as entirely responsible for every single thing embodied in the Bill. At the same time, speaking impersonally as the Member in charge of the Bill, he might, perhaps, draw attention to one or two of the more serious changes made, without expressing any individual opinion upon them.

The principal change he would first notice was that relating to the powers of Magistrates. By the provisions of the Bill as last presented to the Council, the extended powers which it was proposed to give to the Magistrates were intended to be exercised almost in the same summary manner as the powers which the Magistrates now possessed were exercised. The only alteration then made was that which he had just noticed, and the result still was that the High Court were liable to be left, in hearing a case on appeal, with very little indeed to go upon, and, in dealing with a case on *certiorari*, as it was called, might be left with nothing at all. The present Bill materially altered that. It was now rendered obligatory upon every Magistrate, in the first place, to record his reasons

in every case in which he inflicted imprisonment, or any fine exceeding rupees 50; secondly, he was required to draw up a formal charge in every case of an offence punishable with more than six months' imprisonment; and thirdly, he was required to record the whole evidence in full in every case which was appealable to the High Court. But, more than that, the limit of appeal, which in the previous Bill was fixed at sentences exceeding twelve months' imprisonment, and rupees 500 fine, had, in the present Bill, been reduced to six months, and rupees 200 fine—that was to say, that the Magistrates would exercise free of appeal very much the same powers as they exercised at present, only subject to certain restrictions which were not now imposed upon them. Whether, considering the increased facility which, by this very great improvement of the record, was given to the High Court for dealing with a case on *certiorari* (which was an inferior sort of appeal), there was any necessity for also curtailing the relief which the previous arrangement of twelve months' appeals afforded to the High Court, was, perhaps, a matter which only experience could determine.

The next important point was that which related to the power of the Government to appeal against acquittals. This power had been considerably objected to in certain quarters, and, he could not but think, upon grounds which showed that the nature of the provision was not quite thoroughly understood. It was supposed that this was a power which the Government, in its executive capacity, reserved for itself, and did not allow to the subject generally, for the purpose of obtaining its own ends in cases in which it was personally interested. Nothing could be more erroneous than this supposition. In point of fact the power which the Government would exercise, would be simply of the same nature, and exercised in the same way as that which it already had as public prosecutor in an original criminal case. If it were reasonable that the Crown, on behalf of the public, should undertake the prosecution, as it did in every criminal case, it appeared equally reasonable that the Crown should have the power of going up to the higher Court, in the interest of the public, in any instance in which it appeared that there had been a gross failure of justice in the lower Court; and, further, he might say that, in practice in the Mofussil, this power was almost invariably exercised by the Crown at the instance of private prosecutors in cases instituted by themselves. The Crown only moved on the advice of its law officers, and usually had not the slightest personal interest or concern whatever in such cases.

The last point he would notice was that the previous Bill followed perfectly closely the arrangement of the Mofussil Criminal Procedure Code, and, as closely as was practicable, the wording of that Code, only making such verbal alterations as were absolutely indispensable. The present Bill effected a total change in this respect—the arrangement of the chapters had been very much changed, their contents had been consolidated, and an improvement in the language had been introduced in every instance where there appeared to be the slightest room for it. It might, perhaps, be thought that this complete change in phraseology, where the subject was the same, might lead to conflicting rulings upon the Criminal Procedure Codes of the Presidency towns and the Mofussil, and to considerable doubts as to what the law was, or ought to be. But, on the other hand, we did not find in practice that any inconvenience had arisen from the differences now existing between Act X of 1875 and the Mofussil Code, and the Bill which he now submitted to the Council might, perhaps, be very usefully applied in due time towards the improvement of the Mofussil Criminal Procedure Code itself. With these remarks he thought he might conclude. He would merely add that the Committee would recommend that ample time should be allowed for any further objections and suggestions to be made, and that consequently it would probably be advisable that the Bill should not be proceeded with until next cold weather.

The Motion was put and agreed to.

SINDH INCUMBERED ESTATES BILL.

The Hon'ble Mr. Hope also moved for leave to introduce a Bill to relieve from incumbrances the estates of Jágírdárs and Zamíndárs in Sindh. He said that he might perhaps appropriately commence by explaining who those Jágírdárs and Zamíndárs were. The Jágírdárs in Sindh consisted of about 170 families, of whom some sixteen were great Beluch chiefs of very high rank and antiquity, who had been living in the country for many centuries. Then there were the families of the old Amírs of Sindh, who were dispossessed at the time of our annexation. Below them were the Sardárs of various degrees of importance, and there were also what were called Pattídárs, who were chiefly Afghán settlers; and finally, Khyrátdárs or charitable grantees, who were persons of more or less social and religious status—many of them Kázís. These Jágírdárs were a class deserving, he thought, of our highest sympathy and consideration. At the battle of Miání we found that they were the most resolute and gallant soldiers, and once the conquest was effected, they settled down under our rule in loyalty and contentment.

The Zamíndárs in Sindh, generally, were simply the landowners or proprietors of the soil. They were persons who had no subordinate holders under them, but who worked their lands either personally or by labourers whom they engaged, usually on annual contracts: they were not superior holders in any sense. The definition of a Zamíndár in Sindh, therefore, differed from that of a Zamíndár in other parts of India. It was not of course intended that a measure of this description should apply to all the landowners of Sindh, and it was therefore necessary to draw an artificial line so as to show who were to be considered Zamíndárs for the purposes of the proposed Act. This line had been drawn at the payment of not less than Rs. 300 per annum direct to Government. By means of this definition he might say that we virtually got all the landed gentry of the country, and a certain small number perhaps of the very superior yeomanry, and we had to deal with a class who were in many instances of as old standing as the Jágírdárs, and who were held in great estimation and consideration by the people.

Having briefly explained who the Jágírdárs and Zamíndárs were, he would observe that under the Amírs of Sindh their condition was, on the whole, one of very fair prosperity. They were not subject to many of the temptations to profligacy and extravagance to which they were now exposed. There were also fewer means of indulgence. There was then less money in the country; and there was no regular law for the recovery of debts, the consequence being that there was much more difficulty in obtaining paper credit. There was also less necessity for obtaining cash loans, because the Government did not press severely on them for cash payments for their lands, but carried on a system of sharing the annual produce of the lands in kind, which fell heavily upon them in good years perhaps, but did not press in bad ones; consequently, as a class, he believed they were not much, if at all, indebted. If an individual did fall into difficulties, he generally had the liberal assistance of his Government to get him out; he either obtained some remission of his rent, or perhaps an extra jágír if he was in favour, or some sort of composition was made by which he was enabled to pay by instalments. When our British rule supervened, he (Mr. Hope) regretted to say that a very rapid change took place in the condition of the Jágírdárs and Zamíndárs. As early as 1859—indeed before that—their growing indebtedness attracted the attention of Sir Bartle Frere, who passed certain rules for limiting their power of involving themselves and extricating them from the difficulties into which they had got. Again in 1868 Sir William Merewether brought very seriously to the notice of Government the extent to which this evil had spread; and further on, in 1872, Mr. James,

Assistant Commissioner in Sindh, portrayed with great force and ability the history and present miserable condition of the Zamíndárs in certain portions of the Haidarábád Collectorate. This led to a general enquiry into their condition, and the upshot was that it appeared that out of about 170 Jágírdárs in Sindh, no less than 70 were involved in debts amounting to 10 lákhs of rupees. It was also found that 600 Zamíndárs were involved, their liabilities being 20 lákhs of rupees, or 30 lákhs in the whole. No doubt some of these debts were small, but, after eliminating all Jágírdárs who were not indebted more than two years' income, and all Zamíndárs who were not indebted more than two years' Government assessment, there was still a residue of 45 Jágírdárs whose debts amounted to 9 lákhs, and of 370 Zamíndárs whose debts amounted to 17 lákhs. The pressure of debt among the Jágírdárs occurred chiefly in the Haidarábád Collectorate, while the pressure upon the Zamíndárs was greatest in the Frontier Districts, under the Political Superintendent, and in the others bounding upon them. With regard to the Haidarábád Jágírdárs, the fact that nearly 6½ lákhs had been incurred by the immediate families of the Amírs of Sindh, whom we dispossessed in 1843, would show that the case was entitled to very great consideration. Accompanying these financial results we had the most forcible representations from officers of the Bombay Government of the utter state of destitution and distress into which these people, as a class, had fallen. In a great number of instances indeed, Mr. Hope feared, our proposed measure would come too late, as many of them had been already sold up and their lands had passed into the hands of Hindús and other persons; still a good deal might yet be done, and considering who these people were, he thought we ought to try and save them, more especially when we recollected that in India, when classes of this description were ousted from their hereditary possessions, they did not, as in other countries they would do under similar circumstances, amalgamate with the lower orders and gradually disappear in the mass of the population, but remained on in their ancient villages and lands, a perpetual source of quarrelling and disaffection.

As to the origin of all this state of things, there were, naturally, great differences of opinion prevailing, and the controversy had been carried on with a great deal of ability on both sides; but, speaking very broadly, he might attribute it to four main causes. First, there was the natural improvidence and prodigality which characterized the Mussulman nobility in almost all parts of India that we were acquainted with. Next to that were the peculiar natural circumstances of the Province of Sindh; in Sindh water was almost everything, but unfortunately there was perpetually either too much or too little of it, so that it often occurred

that there was not merely a partial or slight failure of crops but a total absence of any crop at all. Besides that, in the period with which we were now dealing, there had been some very bad seasons which had given an additional push to some unfortunate men who happened to be previously involved. Another cause, he must frankly admit to be the operation of the Revenue Survey settlement introduced into Sindh. The Sindh survey commenced many years ago under Sir Bartle Frere, and took a definite form by the application of Act I of 1865. The problem of making a settlement at all in Sindh, instead of going on, as the Amírs used to do, from hand to mouth, no doubt, was an exceedingly difficult one, and was treated by the officers who had to deal with it with great conscientiousness and ability; but the result was that in some cases it had been found in the course of one or two years' experience that the rates were too high, while in others a settlement was made which was not suitable. Further, the application of the settlement was in some instances somewhat harsh and unintelligent; and, finally, the people themselves, being so little accustomed to a measure of the kind, could not sufficiently understand it to avail themselves of all the advantages which it really offered to them. And he must not omit to mention the perpetual change of officers, which he thought he might say was one of the greatest plagues which affected districts all over India, for an officer no sooner got into a district and learned something of its circumstances and people than he was by necessity changed to some new district. Lastly, he must mention the action of the Civil Courts, which took a complete form by the application of the Code of Civil Procedure to Sindh in 1865. There could be no doubt that by this Code, and still more by the mode in which it was worked, the facilities for the recovery of debts by the creditor were enormously increased. He did not wish to be understood as attributing to the Civil Courts all the misfortunes of the Jágírdárs and Zamíndárs of Sindh, but the action of the Courts might fairly take its place among the other causes which he had mentioned. Of course, it would be understood that all this had not been going on without various efforts to improve matters. The rules of Sir Bartle Frere to which he had referred, prohibited a Jágírdár from alienating his jágír beyond a certain extent, and in the frontier districts General Jacob wholly refused to take notice of debts at all; but the Code of Civil Procedure of course put an end to these expedients, which no doubt were somewhat rude, and must at some time have given place to a more regular system. However, the present condition of these people was as bad as it could be, notwithstanding the expedients thus adopted, and there was no question that the measure for relief which had been urged upon the Government ever since 1868 ought to be passed without delay.

As to the nature of the Act, it was contemplated that it should be of the same kind as those which already existed for Oudh, the Broach Taluqdárs, the Ahmadábád Taluqdárs, and for the Chutia Nágpur Chiefs, the last of which was passed but very recently. He should of course reserve an explanation of the details of the proposed Bill for the occasion of its introduction. He was quite aware of the objections which might be made, on economical grounds, to Bills of the general scope of the present one; but as those objections had been fully considered on the three previous occasions on which the subject had been before the Council, and had been held to be outweighed by political and general considerations in favour of the measure, he need not now go into them. Some of those considerations, however, had special force as applied to Sindh, arising from the fact that we had not only an aristocracy but a superior class of gentry involved, and likewise a peculiar nationality to deal with which required cautious treatment. MR. HOPE thought he could not conclude his remarks more appropriately than by reading the following passage from the speech of Sir John Strachey in 1870, when the Oudh Taluqdárs' Bill was introduced in the Council :—

*** "there would be many people who would say that if these estates had been mismanaged by the taluqdárs and thus became encumbered with debts, the sooner they passed into the hands of solvent proprietors, the better. Not only in Oudh, but in other parts of Northern India with which he had been personally acquainted, he had never believed that that principle was a right one to apply. He had always believed, and he thought the experience of 1857 had shown it to be the case, that this was a matter in which we could not afford to ignore the feeling of the people of the country. It shocked every feeling of propriety and justice in the Natives of Northern India, that we should allow estates which had been held in the same family for generations to pass into the hands of strangers—generally of the money-lending class—in satisfaction of decrees of civil Courts for debt. He thought there could be no doubt that the experience of 1857 showed conclusively the mischief thus done. The transfer, under the operations of our Courts, of many ancient estates into the hands of strangers was found, in 1857, to be a great cause of political weakness, by depriving the Government of the support of the chiefs whom the people themselves looked on as their leaders; and it also became a cause of internal commotions and bloodshed among the people themselves."

The Motion was put and agreed to.

BOMBAY MUNICIPAL DEBENTURES BILL.

The Hon'ble MR. HOPE also moved for leave to introduce a Bill to amend the law relating to the transfer of Bombay Municipal Debentures. He said that the matter was a very simple one, and he would explain it in a few words. In 1865 a local Act was passed enabling the Bombay Municipality to raise money on mortgage, and it was provided by that Act that such mortgages

should be transferred by deed duly stamped. As a matter of fact the public in general overlooked this provision entirely, and transferred mortgages in the same way as they transferred Government paper—without any stamp or deed but simply by endorsement. This practice was now found to affect the sale of those debentures, because in consequence of it no present holder could transfer his interest to another with a valid title. The object of the Act in the first place, therefore, was to relieve parties from the penalties which they had already incurred from this course and to validate the transfers which they had made; and, secondly, to assimilate the law to what it was in Madras and Calcutta by allowing such transfers to be made by endorsement.

The Motion was put and agreed to.

MERCHANT SEAMEN'S BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to amend the law relating to Merchant Seamen.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to amend the Indian Registration Act, 1871. He said that the Council would be aware that when we touched on an Act like the Registration Act, which consisted largely of mechanical details, there were always a good many small points which had been observed from time to time, and noted in the Legislative Department, in which amendment was required. Those points would be mentioned in the Statement of Objects and Reasons, and to some extent when he introduced the Bill, if the Council gave him permission to do so. He would only now mention the principal one—the only one in which it could be said that any principle was involved—which he conceived would be a sufficient reason for the Council giving him permission to introduce the Bill.

Everybody knew that the object of a Registration Act was to give certainty to titles and to prevent the operation of fraudulent and secret transactions by which a man's right in the property which he had acquired might be defeated. For that purpose the Registration Act adopted the following arrangements. It took a certain class of documents—documents of the more important kind—and required that they should be registered. There was no option given to the holder of such a document; he must register it within a certain time, and under certain conditions, in order that the document should be valid. Then another class of documents was taken—documents of less importance—as to which an option was given to the holder whether he would register them

or not. For the purpose of giving the registration of the first class, which he might call "compulsory documents," an advantage, it was provided that, unless registered, they should be invalid for certain purposes, which in fact included almost all purposes for which a document should be used, and that they should take effect against any oral agreement relating to the property comprised in them; and for the purpose of giving the holder of documents of the second class, which might be called "optional documents," a motive to register, it was provided that the registered document should have priority over oral agreements and over all unregistered documents of the same class; so that the holder of a document duly registered was perfectly safe against all unregistered documents of the same class, or against all oral agreements respecting the property comprised in his document. But it seemed to have been overlooked that the owner of a compulsory document might be exposed to danger from an unregistered document of the optional class. For instance, supposing he (MR. HOBHOUSE) purchased land and that he paid for it and got his conveyance, and that he registered his conveyance with due formalities on the 1st of January 1876. He was perfectly safe against all conveyances of the same land, though they might have been executed in the year 1875; and he was perfectly safe against oral agreements concerning the same land, though they might have been made and though consideration might have been given for them in the year 1875. But supposing his vendor, in December 1875, had signed an agreement and received consideration for that agreement to the effect that if Rs. 50 was not paid in February 1876, the donor, or holder, of the document should have a charge upon the land, he was not safe against such an agreement as that. That was one of the optional class. The document need not be registered, and there was nothing in the Act which gave priority over an unregistered document of that class. Now, it was obvious that if a transaction of that kind took place, there must be a fraud somewhere. Either there was such an agreement, and then it would be a fraud in his vendor not to have disclosed it to him; and it was right that the holder of the unregistered document should suffer for that fraud because he had had the option of registering his document and had not availed himself of it; one had taken every precaution allowed to him by the law, and the other had not, and it was right that the latter should suffer. Or there was no such agreement, and then there would be a fraud on the part of the person alleging it. Either way it was clear that the holder of the registered document ought to have the advantage. We had been warned by a high judicial authority in Bombay that suspicious transactions had already taken place owing to this omission in the Act; that the people at large were becoming acquainted, through the publicity given by litigation, with the gap that there

was in the Act; and he apprehended that a great many frauds would be executed. That had led us to undertake the task of amending the law, and it would, he imagined, be a sufficient reason for the Council to give him leave to introduce the Bill.

The Hon'ble MR. COCKERELL said that although it was not usual on the occasion of the permission of the Council being asked for the introduction of any measure, and before the substance of such measure was brought under consideration, to raise any discussion on questions of detail, yet the matter to which he desired to draw attention, though in one sense falling within the category of details, involved a question of principle which rendered it eligible for consideration at this early stage of the proceedings, whilst its undoubted importance made it desirable that the question should be considered without unnecessary loss of time.

The system of enforced registration of instruments affecting any interest in immoveable property was first introduced by the enactment of Act XVI of 1864. The details of that enactment having been found incomplete, the law was entirely revised in 1866. Again in 1871, experience of the working of the law having brought to light several imperfections, fresh legislation was undertaken, and Act VIII of that year contained the present law on the subject.

That law restricted the absolute obligation to register instruments affecting immoveable property to cases in which the value of the interest affected was not less than Rs. 100; and the question which he now desired to raise was, whether that restriction should be maintained.

The legislature very naturally at the outset hesitated to extend the obligation to register to the point of including every transaction, however minute, in relation to immoveable property. Great as was the advantage to be anticipated from a complete system of registration of titles and interests in land, yet in the first working of the measure, when the entire machinery for registration was, for lack of experience, necessarily imperfect, there was a risk, or even a probability, of a more than counterbalancing evil resulting from such a step in the harassment of a large number of persons, by their being compelled to travel in many cases great distances to get their documents registered, and further to incur much expense and inconvenience through excessive delay in the transaction of their business at the registration office. It was the anticipation of such annoyances and possible hardship to the people which, so far as

he knew, had alone stood in the way of the attainment of a complete public record of rights and titles in immoveable property.

A system which admitted of so wide a gap for the escape of documents relating to interests in land from registration,—for in many parts of the empire so marked had been the progress of the sub-division of such interests in late years, that individual shares in property of a value below the pecuniary limit of compulsory registration abounded,—was necessarily and avowedly imperfect.

When the existing restriction was originally fixed he believed that it was declared to be a tentative measure; and although he had not been able, within the short period in which he had notice of any proposal to bring forward a Bill for amending the present law on this subject, to obtain access to the connected records or papers, yet he felt sure that he was correct in saying that on each of the occasions to which he had referred, on which the reconsideration of the law had come before this Council, the expediency of abolishing all restriction of the absolute obligation to register had been mooted and more or less earnestly advocated.

In these circumstances he ventured to suggest that the time had now come when the existing restriction might be safely removed and the registration of all documents affecting any interest in immoveable property rendered compulsory. Five years had now elapsed since the present law was enacted, and he was strongly of opinion that the objections to the extension of the compulsory system to the most minute written transactions affecting interests in land had been in great measure, if not wholly, obviated, in at least many parts of the empire, by the greatly improved working machinery which time and experience had brought into operation.

Moreover the consideration and adoption of the course which he was now advocating were peculiarly pertinent to the present occasion; for there was before the Council a large measure for amending and reforming the whole procedure of the Civil Courts, and a most important section of that measure was the improvement of the system in force for the execution of the Courts' decrees. It was, he might say, an essential condition of any substantial improvement in that direction that we should have a complete public record by means of which rights, titles and interests in land could be sifted and ascertained with absolute certainty down to the lowest degree; and such a record must be wanting so long as the existing limitation was maintained.

For these reasons, he would ask the hon'ble and learned mover to consider the propriety of so framing the Bill which he was about to introduce as to make the registration of all deeds relating to immoveable property compulsory, or to consent to the sending of a special requisition to all Local Governments and Administrations to advise the Council as to the propriety of the change proposed with a view to its being adopted and incorporated in the Bill whilst it was before a Select Committee.

He felt strongly that the present opportunity for making this very important change should not be lost, if after a general consultation of experienced local officers competent to give an authoritative opinion on the subject, the change should appear desirable.

The Hon'ble MR. HOBHOUSE said that he had only one or two remarks to make on his hon'ble friend's observations. Mr. Cockerell had no doubt raised a large question of principle, which he was perfectly entitled to raise on the present occasion. He would not discuss it now, because he presumed that his hon'ble friend would have something more to say about it, and in greater detail, when he (MR. HOBHOUSE) came to introduce the Bill, which was the correct time for discussing the principle of the measure. He began by stating that this was a measure which could hardly be said to have any principle, being all detail, but he found now that it had a principle, because the question was whether we should undertake the large operation of making our registration system extend to all documents, or whether we should only undertake the smaller operation of making the system now existing more perfect than it was. His hon'ble friend had stated that he had not seen the papers on the subject, and he would undertake that, between that time and the introduction of the Bill, he would give him a very thick bundle which was lying on his table, which he would find very interesting, and which would take him some time to read; but he did not think that he would find that we had materials for entering into such a large operation as he wished to undertake. He thought that before we could commence any such operation, we should have to make a great deal of inquiry, which would take time, possibly a couple of years. When, however, his hon'ble friend had read the papers, he could form his own judgment whether it was wise to press for a wider measure, or whether it was better to undertake the smaller measure which he now asked for leave to introduce to the Council.

The Motion was put and agreed to.

STAGE CARRIAGES ACT AMENDMENT BILL.

The Hon'ble MR. BAYLEY moved for leave to introduce a Bill to amend the Stage Carriages Act, XVI of 1861. He said that the proposed amendment was a very small one. The Act of 1861 provided certain regulations with the object of bringing stage carriages within the control of the law, and preventing the great abuses which had previously existed from horses being driven in an improper condition and the carriages being overladen, and from intoxication or carelessness of drivers and other similar evils. The first and the last sections provided that it should apply to every carriage drawn by one or more horses which should be used for the purpose of conveying passengers for hire, and that such carriage should be deemed to be a stage carriage within the meaning of the Act. The twenty-first section provided that the term 'horse' should include ponies and mules; but it was found by experience, in the North-Western Provinces especially, that carriages of this kind were often not drawn by horses, ponies, or mules, but by camels or oxen, and that the same abuses which the Act was intended to prevent existed with regard to those conveyances. The whole object of the Bill, therefore, was that the law which now applied to carriages drawn by horses should be applied to those drawn by camels and oxen.

The Motion was put and agreed to.

OPIUM BILL.

The Hon'ble SIR WILLIAM MUIR moved that His Honour the Lieutenant-Governor of the Panjáb be added to the Select Committee on the Bill to amend the law relating to Opium. He explained that as opium was grown in the Panjáb, Sir Henry Davies was interested in the Bill, and was quite ready, as he was present in Simla, to act upon the Committee.

The Motion was put and agreed to.

The Council adjourned to Thursday the 29th June 1876.

SIMLA;
The 22nd June 1876.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 *Vic., Cap.* 67.

The Council met at Government House on Thursday, the 29th June 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble John Inglis, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble F. R. Cockerell.

MERCHANT SEAMEN'S BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to amend the law relating to Merchant Seamen be taken into consideration. This Bill was introduced into the Council last September for the purpose of making some amendments on isolated points in our Merchant Shipping Law, which had beenbrought to the notice of the Government by the various maritime authorities. The Council was aware, as he had explained at the time of the introduction of the Bill, that we had pending a general measure for amending and consolidating our Merchant Shipping Law. That measure had now been before us for—he thought he was not wrong in saying—nearly ten years; but it had been put upon the shelf for the reason that a similar measure had been knocking about the House of Commons, and the House of Lords, for the amendment of the law upon the same subject in England. The Merchant Shipping Law was one of those laws which it was of great importance for us to make agree as nearly as circumstances would permit with the law of England. In the first place, the English Merchant Shipping Act of 1854 was directly opera-

tive in India, partly by its own force, partly by being the basis upon which our Indian Merchant Shipping Act was framed, and with which it interlaced a great number of points; and the other principal English Shipping Act, namely, the Act of 1862, also directly affected us, and it was one of those Acts which we were not able to affect by our legislative powers. It was therefore very necessary for us to follow the English law as closely as Indian circumstances would admit, and on that ground the Secretary of State advised us to put our great Merchant Shipping Bill on the shelf, and defer the consolidation of our own law until we saw into what shape the English Parliament would put the law of England. We had reason however to believe that this year this very long story would come to an end, and then we should be in a position to consolidate our own law. On that ground we had been advised by the Government of Bombay—a maritime Government interested in the question—to postpone this Bill; but it seemed to him that we had better not postpone the consideration of those points which must be dealt with when the law was finally settled, and which were now quite ripe for decision. They had been the subject of discussion for some years, and of communication between the Supreme Government and the various local maritime Governments; and they had also been the subject of communication between ourselves and the Board of Trade, who had approved of the contents of the Bill as introduced into Council. Even if the Merchant Shipping Bill now before Parliament should pass this session, it was quite certain that a considerable time must elapse before we could fully consider the subject here, and say exactly how much of the measure was suitable, or how much unsuitable, to Indian circumstances, and before we could propound, in conjunction with the Secretary of State and the Board of Trade—who must be taken into consultation upon such points as those—the exact measure which we should consider suitable for India. To effect this a considerable time must elapse, and, in the meantime, he thought that we had better deal with the various points suggested to us from the different maritime ports in India.

The first point in the Bill was contained in section 3, which related to the rather difficult and troublesome subject of distressed seamen. The Merchant Shipping Acts gave large powers to the Governments of all dependencies of the British Empire to take up seamen who were left on their shores, and to send them back to their homes at the expense of certain funds which were under the control of the Board of Trade. But it was a great mischief having those distressed seamen at all, and it was desirable to contract the limits of the mischief as much as we possibly could. This Bill was

principally concerned with that particular subject; it provided for a more speedy way of shipping distressed seamen, and avoiding disputes about who were, and who were not, distressed; and it sought also to prevent the mischief from growing into undue proportions by placing a certain restriction upon the discharge of seamen. Section 3 dealt with the one subject of distressed seamen. Now every British ship-owner was bound to receive a distressed seaman, but he might raise a dispute in every case whether or no the man was a distressed seaman, and that dispute might be carried into a Court of Law, and decided in the ordinary way upon proceedings taken against the Captain for refusing to receive such seaman. Now that was a dispute which might arise under very critical circumstances—it would be most likely to arise just when a vessel was going to start—which it would be utterly impossible to settle in time unless by some summary method. The Board of Trade had suggested that we should enact the infliction of certain penalties upon Captains refusing to receive seamen. There were penalties in England upon Captains for offences of this kind, but they had not been, and were not now, liable to penalties in India. But when we came to consider the subject, and to look at the cases which had actually arisen under the Merchant Shipping Act, we found that penalties would hardly meet the point, because we could not inflict a penalty unless it was first decided whether the Captain refused to receive the distressed seaman, whereas the issue raised was whether the man was a distressed seaman or not. We therefore proposed to make the decision of the local authorities binding upon the Captain. If he felt that in any case he was an injured man, he must lay his case before the Board of Trade, and complain if we had acted wrongly. But we proposed to cut short those disputes by saying that a certain certificate given by the local authorities should be evidence that the seaman was distressed, for the purpose of compelling the Captain to receive him, and of enabling him to claim indemnity from the funds under the control of the Board of Trade. That was section 3. He should explain that we had received a communication from the Bengal Chamber of Commerce on the subject, and they desired that from this certificate there should be an appeal. The Bengal Government very properly observed upon that, that an appeal would defeat the whole object of the measure, because it would introduce those very disputes and delays which were apt to occur now, and which the section was intended to get rid of.

Then we came to sections 4 and 5, which related to the discharge and engagement of seamen. With respect to the discharge of seamen it was provided by the British Merchant Shipping Act that they should not be discharged

except with the sanction of certain local authorities; that was intended for the purpose of preventing improper discharges by which seamen were thrown upon the charitable funds of the place where they happened to be. But a dispute arose in India whether that sanction of the local authorities was entirely within the discretion of the sanctioning authority, or was a ministerial act which he was bound to perform, upon the master or seaman or both showing a case for the discharge: and it was actually decided by a Judge of the High Court of Calcutta that the sanction was only a ministerial act. That was quite contrary to the view of the Board of Trade, and to the view that had been acted upon all over the British Empire. Of course the Bombay ship-owners were not slow to avail themselves of the advantage of the Calcutta decision, and they raised the question in Bombay, when a decision was come to in opposition to the Calcutta decision and in accordance with the view of the law prevailing everywhere else. We had always acted on that view; still, as we were amending our law, we thought it better to put it entirely beyond question, and make it quite clear that this sanction for the discharge of seamen was to be exercised at the discretion of the local authorities. We also added a penalty leviable in India, in addition to the penalty leviable in England, for the discharge of seamen without proper sanction.

Section 5 was intended again to give the Local Governments control over improper discharges, and the principle upon which it was founded was this. It was very frequently found that Captains of vessels desired to get rid of their European crews, either to save money or for some other reason, and to replace them by Natives of India. The result was that the European crew ran loose on our shores without employment, loafed about, and fell into the category of what we called 'distressed seamen'—a very undesirable class of people to have. Therefore we proposed to give Local Governments the power to forbid the engagement of any Native of India to serve as a seaman on board any ship specified in the order of prohibition; and it was conceived that such a provision would strike at the root of the evil. The suggestion had been made by the Government of Bombay; it had been adopted by this Government, and was approved by the Board of Trade.

It was opposed, however, by the Bengal Chamber of Commerce, and what they said about sections 4 and 5 was this:

"The object of these two sections appears to be the very desirable one of preventing the accumulation of vagrants in Calcutta, which, as already remarked, is a public nuisance of no small magnitude, and in that respect the sections are approved: but at the same time their

provisions involve the important issue of interference with agreements between master and seamen. In many cases men are shipped for the voyage only, and the Committee apprehend that the Local Government has not the power to set aside such special contracts.

"Seamen thus paid off can always be sent home as distressed seamen in case of there being no regular employment for them, but as a rule there is always a demand in this port for able-bodied men.

"The refusal to allow ships to take native crews in the place of Europeans is, in the Committee's opinion, indefensible on the broad principle of interference with freedom of trade, and would be especially unjust in cases where vessels or steamers come to India with the object of regularly trading to and in the East. It is true that, under these sections, with the sanction of Government, seamen may be discharged and native crews engaged; but if the seamen agree to take their discharge, and lascars are willing to take their place, it should be an obligation on the part of Government both to grant the discharge and to sanction the engagement."

Of course, we did not assume powers to set aside any special contracts as between masters and seamen; what we said was, that whatever the contract, or whatever the rights of the parties might be as between one another, they could not bind us by making arrangements to cast a number of distressed seamen on our shores; the very object of the provisions in the English Act 1854 was to prevent that operation, and we were only now making the provisions of that Act more efficient in India. The Bengal Government, in forwarding the remarks of the Chamber of Commerce, made very much the same observations that he (MR. HOBHOUSE) had made. They said that it was public policy to prevent those discharges of seamen, and that they were prevented by means of giving to the local authorities a discretionary power of veto upon them. We were now only making this means more efficient, and it seemed perfectly right that we should do so.

Section 6 related to desertion, and all it provided was that the Master of the ship should report the desertion to the Local Government. He thought that everybody approved of that. The only difference between the Bill as introduced and as it now stood before the Council as amended by the Committee was, that section 6 of the former Bill provided that the Master or owner of a ship should be equally bound to report. It was pointed out by the Chamber of Commerce, and by the two mercantile gentlemen who sat upon the Committee, that the owner of a ship never knew anything about those things, whereas, in cases of desertion or absence, the Master must always know, and he was the proper and only person on whom the obligation should lie. The Committee therefore altered section 6 of the present Bill in that sense.

Sections 7 and 8 were again connected with the same subject of discharged and distressed seamen; only they related to those seamen who were put in prison. Now again we were told that it was a common thing for Masters of vessels to make complaints against seamen for breaches of discipline and petty offences; to get them put in prison, and then immediately to fill up their places with Natives; and so in fact to leave the seamen a charge upon our hands. That was the mischief struck at by sections 7 and 8. We had a clause in our Shipping Act (section 88, Act I of 1859) to the effect that if a seaman was imprisoned for certain offences—being those petty offences against discipline which he had mentioned—a Magistrate might, with the consent of the Master of the vessel, relieve him from imprisonment and send him back on board ship. We proposed to extend the operation of that law. It was suggested by the Board of Trade that we might make it compulsory upon the Master to receive back the man; but we thought that that would be going too far, and that if the quarrel between the Captain and the man had proceeded to a certain point, there might be danger in forcing the man back upon the Master. What we therefore proposed was this: In the first place, we proposed that the Master should not be able to engage Natives, without sanction, while any of his men were in prison; in the second place, we proposed that the local authorities should be able to tender the man to the Master, and that if the master did not receive him, he should deposit a sufficient amount of money to defray the expenses of taking the man home according to the scale of cost usual in the case of distressed seamen. We also proposed to extend the provisions to other petty offences. Those provisions were again objected to by the Bengal Chamber of Commerce, and he would read what the Chamber said with regard to those two sections 7 and 8:

"The Committee have no objection to offer to the former of these sections except in so far as it is applicable in connection with the section following. The provisions contained in section 8 are, in the judgment of the Committee, most unjust and prejudicial to the ship, while at the same time it offers to the seaman inducements to commit offences so as to bring him under its operation. It seems to be overlooked that a ship has to take away another man in the place of the prisoner if she refuses him; and the Committee cannot see why the prisoner so refused should not work his way home in another vessel. The provisions of the section are tantamount to giving the man, at the expense of his late ship, a three months' holiday after his imprisonment; and if his offence has been such as to compel the Master to refuse to receive the prisoner, the law should rather protect the Master than a refractory seaman, who may at sea repeat the offence for which he was punished ashore, and be a troublesome and unwelcome member of the crew on the return voyage. It should be *optional* with the Master, and *not compulsory* on him, to take back a seaman after his imprisonment."

The Bombay Chamber of Commerce made an observation somewhat similar to the first of the objections of the Bengal Chamber, namely, that the provision was apt to encourage insubordination on the part of the seamen; and the Governor of Madras had made a similar remark. It seemed to MR. HOBHOUSE that all those observations lost sight of the reason for this clause. As for the observation that the provisions of the section were tantamount to giving the man, at the expense of the ship, a three months' holiday after his imprisonment, MR. HOBHOUSE did not understand what it referred to. All the good that could happen to him would be that he would be sent home as a distressed seaman; not a single penny was to come into his pocket, nor was he to have any benefit from our provisions. But as regarded insubordination, the theory, supported by opinions from the maritime officers, was, that those quarrels were, he would not say, got up by the Master, but laid hold of by him in order to get rid of the man; because it was found that once the man was in prison, the Master engaged Native seamen and was off with the ship. The Lieutenant-Governor of Bengal gave the proper answer to those objections in sending on the remarks of the Chamber of Commerce. When he forwarded those remarks, he endorsed the observations of the Shipping Master of Calcutta, which were to this effect:

"The change in the law to be made by the 7th section is advisable, and, followed by section 8, will render it impossible for a Master to get rid of his European sailors by procuring their imprisonment and then declining to take them out of jail to go on their voyage. The whole tendency of these leading sections of the Bill is effectually to remedy the evil which has been so long felt in Indian ports, of British seamen being thrown out of their proper employments, and becoming helpless and destitute on the hands of Government."

It seemed to him that this was quite a sufficient reason for retaining sections 7 and 8 in the Bill in the form in which they now were. The alterations made in them by the Committee had the effect of diminishing the amount of the deposit which the Master was bound to make in case he refused to receive a seaman. As the Bill was introduced, it required him to deposit a sum sufficient to defray the cost of the passage of the seaman to the port from which he was shipped, and of his subsistence during such passage, and also of his lodging and subsistence during his detention at the place at which he was imprisoned until he embarked. It now only required him to deposit a sum calculated by the Local Government to be sufficient to defray the cost of passage, according to the scale of cost usual in the case of distressed seamen. As regarded the contention of the Chamber of Commerce that it should be optional with the Master to take back a seaman, it would be optional. But we should test his

good faith by requiring him, in case he refused to take the seaman back, to defray a cost which would otherwise be thrown on the Government of India or the Board of Trade, namely, that of conveying him to his own home.

The other two sections he need not explain at any length. One referred to the space to be allowed on board ship. It somewhat enlarged the space given by the present law. We were advised from some quarters that the space given by the English law was still larger, and that we had better make our space the same as that allowed by the English law. He was quite incompetent to advise the Council on that point, or even to explain exactly why the existing or the proposed measurements were chosen for India. If it was necessary to make our law in accord with the English law, no doubt that would be done by the Consolidation Bill, and the matter would be considered in the Department over which Sir Alexander Arbuthnot presided. It had been very carefully considered after communication with the Local Governments in that Department, and the amount of space specified by the Bill was settled as being the best at this moment. At all events, it was an increase on the present space, and he thought we might allow the proposed arrangements to stand, reserving it for consideration afterwards whether the space should be further enlarged in accordance with the English law.

By the tenth section it was proposed to remove a certain ambiguity which existed in the corresponding section of the present law, which related to the payment of wages in India in English currency. It was proposed to confine the operation of this section to those cases in which the rate of wages was stipulated for in British currency. The existing section extended to cases in which stipulations had been made for payment in other currencies; but it was found impossible to apply a definite rule to such cases, and it was thought better to leave them to the general operation of the law. It was convenient to have a cut-and-dry rule for stipulations made for payment in British currency, and the section provided that payments should follow the rate of exchange for the time being fixed by the India Office and the Treasury for their pecuniary transactions. That was the present practice, and, he believed, quite a legal one, though some doubt had been expressed about its legality.

Having now gone through all the sections of the Bill, he had only to add that, although we were now sitting at Simla, the whole substance of the amendments by the Committee had been settled at Calcutta. We had had the advantage there of the presence of Mr. Bullen Smith and Mr. Cowie, who had paid great attention to this matter, and attended the sittings of the Committee,

and several alterations had been made at their instance; he had mentioned one which occurred in sections 7 and 8, namely, the amount to be deposited by the Master of a ship. The Committee had also, in deference to their opinion, and to the opinion of the Bengal Chamber of Commerce, omitted the definition of the word 'owner' of a ship. As the Bill was introduced, it made the owner of a ship include the agent of a ship; what the mercantile gentlemen said was that the agent of a ship did not occupy such a position as ought to expose him to the various provisions of this Bill. The Committee therefore omitted that definition and kept in only the words 'owner' or 'master,' as the case might be. At the same time they had modified sections 4, 5 and 8, by making the expressions rather more general, so that if the agent of a ship should occupy the same position as the owner, which might be the case for all we knew in Bombay, then the provisions would apply; and if the agent should commit offences which were struck at by the Bill, he would find himself exposed to penalties.

After the amendments agreed on at Calcutta had been put into proper form and the draft report prepared, they were laid before our two mercantile Members, who, as the Council would observe, had signed the report.

The Hon'ble SIR ALEXANDER ARBUTHNOT wished to make one remark with reference to section 8 of the Bill, in addition to the observations addressed to the Council by his Hon'ble friend Mr. Hobhouse. That section contemplated the possible existence of circumstances under which the Local Government would exempt a Master or owner from receiving again on board ship seamen who had undergone imprisonment. Mr. Hobhouse did not, SIR ALEXANDER ARBUTHNOT thought, advert to the words "without assigning reasons satisfactory to the Local Government" which occurred in the clause. There might of course be extraordinary circumstances which would render it very hard on the Master of a ship to be compelled to receive back a seaman, and that was provided for in the section.

The Hon'ble MR. BAYLEY would make one remark with regard to sections 4 and 5 of the Bill. A case that recently came before him officially, illustrated, he thought, very accurately what the working of those sections was likely to be. A vessel arrived at the port of Rangoon not very long ago the Master of which made certain complaints against his seamen. They on their part met those complaints by assertions of brutal treatment on the part of the Captain himself; unfortunately, the officer before whom those complaints were urged was unaware of his actual powers, and he allowed the matter to be compromised, and the Master to discharge the seamen

without their case being fully inquired into. The result was, that the Master shipped a lascar crew. On the voyage home one of those lascars was undoubtedly done to death by the Captain, and several of the others were most brutally treated. If the proposed sections had been then in existence, MR. BAYLEY thought that, in the first place, it was probable the officer before whom the complaints had been laid, though he might have permitted the discharge of the seamen, would pretty certainly have inflicted a penalty on the Captain; as a matter of course, he would not have permitted the Captain to engage a lascar crew, and the horrible scenes which subsequently occurred would, undoubtedly, have been avoided.

Colonel the Hon'ble SIR ANDREW CLARKE said that, with reference to section 3,—unless the English Merchant Shipping Act especially provided for it and limited the number of seamen that any ship could be compelled to receive on board as distressed seamen,—the wording of this clause, as it stood, might lead not only to very considerable hardship to the owners and Masters, inconvenience to its ordinary crews, but might even imperil the actual safe-conduct of a ship in its subsequent passage to its destined port. This would be hard on a British ship clearing for a foreign port from which had sailed a ship of another nationality having left in our port some fifteen or twenty men to receive them for passage back to it; it would be hard on the ship of the same nationality, but it was not clear if we could compel a foreign ship to receive its own countrymen. This was a large power to confer, even if exercised only by the higher officials of Local Governments; but it would be in reality left in the hands of the Harbour Master and his subordinates.

His Excellency THE PRESIDENT said he apprehended that section 3 of the Bill, to which the Hon'ble Member referred, only applied to British ships. The section distinctly declared that any Master of a British ship refusing to accept seamen as distressed seamen would be liable to the penalty.

Colonel the Hon'ble SIR ANDREW CLARKE said that he also alluded to the case of a Master of a British ship having to receive a large number of foreigners on board; that would, if possible, be a still harder case.

His Excellency THE PRESIDENT thought that the matter would naturally be one of reasonable arrangement with the local authority. He should think it improbable that the local authority would insist upon an inordinate number of British seamen being shipped on the same ship.

Colonel the Hon'ble SIR ANDREW CLARKE thought that if the matter was entirely dependent upon the Local Government, the occurrence would probably not arise, but it would be very likely to arise from a Harbour Master being allowed to assert his right to place on board ship the number of men he might have on his hands, and the difficulty of the matter was enhanced by the Master being deprived of the right to appeal.

The Hon'ble MR. HOBHOUSE explained that the law upon which we were operating was not Indian law but English law. We were only laying hold of certain clauses in the Merchant Shipping Act of the British Empire, and doing our best to make those clauses work in India. But the obligation to receive a distressed seaman when the fact of the distress was ascertained was contained in the English Act, and it was without statutory limit, though of course there must be a practical limit, which would be settled, he had no doubt, by arrangement between the local authorities and the Master of the ship. That law had been in operation ever since the year 1854, perhaps longer, but he had not traced back its history beyond 1854. The Masters of ships were not a class to be silent when any injury was done them; in point of fact, complaints did come to the Board of Trade of the improper action of the authorities in the dependencies of the Empire, amongst others in India. There had been three or four of those complaints which he had had to look into made by Masters of ships, but he had never yet heard of a complaint of too many men being forced on board ship. Of course, there might be such complaints without his hearing of them. But the Bill had been very carefully considered, not only by the maritime authorities in India, but by the several Chambers of Commerce who represented the interests of the Masters of ships, and nobody had made that objection, namely, that there was a danger of too many men being forced on board ship. It seemed therefore to MR. HOBHOUSE that we had better let that question alone; nobody appeared to be suffering any grievance, and we should be introducing a limitation that might be inconvenient if we were now to insert a provision that a Master of a ship should not be bound to take in more than a certain number of men.

Colonel the Hon'ble SIR ANDREW CLARKE remarked that the section in question imposed a very much heavier penalty for refusing to receive distressed seamen than the English Act. However, as he now understood from Mr. Hobhouse that those directly interested were content with this particular provision in the Act, he would not trouble the Council further on the subject.

His Excellency THE PRESIDENT said that he was under the impression that the Bill left the right of appeal to the Master of a ship who had cause to complain of having been forced to take too many seamen on board; but the appeal was to the Board of Trade.

The Hon'ble MR. HOBHOUSE explained that there would be no legal appeal at all. It would be an executive matter, and complaints would be sent in in the nature of the complaints now made. There were a great many arbitrary discretions given to the local authorities, and every now and then the Masters of ships complained that those powers were improperly exercised, and the officers concerned were either justified or were warned not to do the same thing in future, as the case might be.

The Hon'ble SIR WILLIAM MUIR inquired, with reference to section 3, to whom was the refusal of a Master to be given in the case of his declining to receive a distressed seaman. Was it to the Local Government, or to a subordinate authority?

The Hon'ble MR. HOBHOUSE said that it was to an officer appointed by Government, usually the Shipping Master of the port.

His Excellency THE PRESIDENT presumed that the question of whether the seaman was entitled to a free passage was to be settled by the Secretary to the Local Government.

The Hon'ble MR. HOBHOUSE said that the Secretary, or an officer specially appointed by the Local Government, must sign the certificate of his distress.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to amend the Indian Registration Act, 1871, and moved that it be referred to a Select Committee with instructions to report in four months. He said that he would mention to the Council one or two of the principal points on which it was proposed to make amendments in this Act.

The first section proposed to empower the Local Government to appoint more than one Sub-Registrar to a sub-district. There seemed to be some doubt whether such a power was contained in the Act, and the section now distinctly empowered the Government of Bengal to appoint one or more Sub-Registrars.

The second section proposed to make an addition to section 17 of the Act. Section 17 was that important section which indicated those documents of which the registration was compulsory. There were several exceptions made to the operation of the section, and the latter part of it provided that the prior compulsory clauses should not apply to certain deeds and documents. We proposed to add to this that they should not apply to any document which merely created a right to obtain another document which would create the right in question; that was to say, supposing there was an agreement by a man to execute a conveyance of land, the agreement need not be registered. The owner of the agreement would have an option to register it, which might be advantageous to him under certain circumstances. For the agreement would give him no absolute right to the land; and if before he got his conveyance, another person took a conveyance and registered it, acting honestly, the agreement would be displaced. But it might be hard to compel the owner of such an agreement to register it, for he would have to register his conveyance when it was completed, and in that case there would be two registrations for one transaction.

The next amendment was in section 18. Section 18 was the section which indicated those documents of which the registration was optional, and in the last clause of that section (clause 7) a number of instruments were mentioned some of which would fall within the description contained in section 17, the compulsory section. So that there was in the strict literal construction of the two sections a conflict between them, while the meaning was that section 18 should only comprise those instruments which were not already laid hold of by section 17; and he believed that in the Presidency of Madras an opinion had been expressed by high authority that the clause of section 18 was calculated to take out of section 17 altogether every single instrument which was enumerated in that clause. It was therefore proposed to alter the wording, so as to make it clear that section 17 entirely overrode section 18 in that particular respect.

Section 5 of the Bill simply amended the drafting of section 31 of the Act, which related to the presentation and deposit of documents at private

residences. Then there were some rather long amendments set forth in sections 7 and 8, which entirely related to the deposit of wills. It was found that the present clauses did not entirely satisfy the conditions of the case, and so it was proposed to make some slight changes in detail; but there was no alteration of principle.

Section 9 was the most important section in the Bill, and it was the section which he had explained at length at the last meeting. The remaining sections in the Bill were concerned with effecting either mere amendments in drafting or the removal of some ambiguities which had been brought to notice. They were all however matters of exceedingly small detail which it would be a waste of time to explain to the Council on this occasion, but which would of course receive the necessary consideration in Select Committee.

The Hon'ble Mr. Cockerell said that unless the very rapid passing of the Bill into law was deemed to be imperative—and such would not appear to be the case from the terms of his hon'ble and learned friend's motion as it now stood (namely, that the report of the Select Committee should be made *within four months*)—he trusted that the question which he had raised at the last meeting of the Council would meet with due consideration, and that the Local Governments might, if possible, be consulted in regard to it whilst the Bill was in Committee.

He had stated on the occasion referred to that a compulsory registration of all documents affecting title or interest in immoveable property was the aim and object of the projectors of the present system, and that this intention had been kept prominently in view on each successive occasion of the registration law coming under revision by the legislature. He would now, in support of that statement, with the permission of the Council, read a few extracts from speeches made on those occasions, to show exactly what had been said in regard to the course which he was now advocating.

So far back as 1834, the Court of Directors of the East India Company proposed the enactment of a law making registrations of deeds relating to immoveable property without any limit or reserve compulsory, under such penalties as might be deemed requisite. A project of legislation in that direction was then set on foot and referred from time to time to various Committees, until in 1864 a Bill containing the main substance of the present law on the subject was matured in Committee. On bringing up the Committee's report for consideration by the Council, the Member who had charge of the

Bill, after adverting to the varied labours which had extended over so many years in the elaboration of the measure then under consideration, said :—

* * * * * * "The result has been the preparation of a law for the registration of assurances which, *although it does not extend compulsory registration so far as was advocated at one time*, will be an immense improvement upon the present law according to which registration is optional The several Committees to whom the original Bill, of which the Bill now before the Council is an amended form, was referred, have, I think, wisely refrained from making the law too stringent on its first introduction, leaving its extension to the future, when the people at large from their experience of this limited measure shall have become fully sensible to the advantages of registration and be prepared to receive without fear a more complete and extensive law on the subject. The measure as it is now presented to the Council will, it is trusted, secure the formal registration of every important transaction relating to immoveable property over a large portion of the empire, and, by bringing together in central offices in each district all documents relating to such landed property, greatly facilitate all transfers of land by rendering comparatively easy the investigation of title The prevention of suits founded on false claims, supported by false witnesses and forged documents will in a considerable degree be attained as regards landed property of importance" * * * * * * * * *

Then again in 1866, when the law came under revision, the mover of the amending Bill on the occasion of its introduction said in reference to the particular question now before the Council:

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"But if any alteration were about to be proposed in the main features of the existing law—if the list of documents the registration of which was now optional or compulsory was to be revised—he thought that alteration ought to take place in quite a different direction from that desired by these gentlemen" [This was in reference to a proposal put forward by certain indigo-planters to extend the period of short-term leases the registration of which was to be optional] "When alteration of this nature took place he hoped it would be *to make the registration of all documents relating to immoveable property compulsory*, rather than to increase the number of those, the registration of which was now optional.

"There was no doubt that the line drawn by the present law was very arbitrary It was quite possible for a man to evade the law altogether by dividing his estate into small lots of less than Rs 100 in value each, and then the public would lose the advantage of being able to inspect the register of titles. So again the registration of a deed of sale of a piece of land valued at less than 100 rupees was optional, but a lease of the same piece of land for thirteen months must be registered" * * * * *

And when the Report of the Select Committee on this amending Bill came before the Council, it was explained that—

* * * "the Committee had carefully considered the question of enforcing the compulsory registration of all instruments relating to immoveable property. As the law now stood, the

registration of such instruments was not compulsory if the value of the property to which they related was less than 100 rupees, and under the present Bill this exemption was continued. No doubt *it was extremely desirable that all such instruments should be registered, however small in value the property might be to which they related; but for the present* they thought it better to leave it to the option of the parties whether instruments relating to property of trifling value should be registered or not It formed, indeed, no part of the intention with which this revision of the law was undertaken to extend the area of compulsory registration. Notice had not been given to the public of so important a change. It was true that *there was a strong and growing feeling in favour of such extension,* but they were on the whole of opinion that it would be wiser to invite through the local administrations a full expression of public opinion on this important question before legislating further in this direction." * * * * *

The revision of the law was again undertaken in 1870 as a part of the general consolidation of enactments then being carried out. On the introduction of the amending and consolidating Bill the following remarks were made in connection with this special subject :—

* * * "There was one important alteration of the law not included in the Bill as it now stood which was strongly advocated in some quarters, and especially by the Government of the North-Western Provinces.

"At present the registration of deeds affecting title to immoveable property not exceeding 100 rupees in value was optional. This exception to the general rule regarding instruments affecting that class of property was probably intended to prevent the conditions of the law working harshly in the case of transactions of a petty character; but as in this country the mass of transactions did partake of that character, the effect of the exception was to check very materially one of the chief objects of the registration-system—the attainment of a complete record of title to immoveable property.

"The very large number of documents of this class which were now registered, though their registration was optional, pointed to the conclusion that to make such registrations compulsory would entail no hardship or serious inconvenience, whilst the gain to the completeness of the record of title to immoveable property which the registration-system was specially designed to afford would be very great"

He had read these extracts to show that the original introduction and subsequent retention of the existing limitation of compulsory registration of deeds relating to immoveable property were simply provisional. It was a precautionary measure and intended to have temporary operation only.

Indeed, it must be obvious that the chief end and object of a system of compulsory registration of deeds affecting titles and interests in immoveable property, namely, the creation of a complete public record by means of which

rights and titles in such property might be thoroughly sifted and investigated by interested persons, and the consequent prevention of frauds in regard to the transfer of such property, could not be fully, or even satisfactorily, attained under anything short of the enforcement of an unlimited legal obligation to register such documents.

It seemed, then, to him that with such a strong case for an unreserved obligatory registration of deeds of title to immoveable property, the only reasonable grounds for objecting to the removal of the present tentative limitation must be either that the number of transactions to be affected by such a change was too insignificant to make it worth while to alter the law in this direction, or that the registering machinery was even yet too defective to admit of such an extension of the area of enforced registration, without causing serious inconvenience and expense to a class or classes least able from their circumstances to bear the burden.

Now, as regards the first point, his means of information were not such as to enable him to say confidently that transfers of, and dealings with, titles in immoveable property of very small value, which formed the subject of written instruments, were common in all parts of the empire; but he believed that in most of the provinces such minute transactions would on enquiry be found of very frequent occurrence, and at least he could with certainty affirm such to be the case in the province of Bengal, with the circumstances of which he was best acquainted. In regard to this subject he must further tax the patience of the Council by reading another extract. The Registrar-General of Bengal in 1870, in reference to the amendment of the law then under the consideration of the Legislative Council, wrote :—

"It has been asked whether the time has not arrived when the limit of Rs. 100 should be withdrawn, thereby rendering compulsory the registration of all documents affecting immoveable property, no matter what their value.

"At first I was inclined to advocate a change of this nature, but on more mature consideration I do not feel satisfied that the advantages which it may be supposed would accompany the change outweigh the inconvenience to which people would be put by the proposed extension. Optional as is at present the registration of assurances of less than Rs. 100 in value, no less than Rs. 1,36,163 such assurances have been registered within the last three years against 4,06,058 compulsory registrations.

"Nor do these figures convey any adequate impression of the number of such assurances that would have to be placed on record were their registration to be made compulsory. It is sufficient, perhaps, to state that, with the law as it stands, upwards of 60 per cent. of

the total number of documents registered are for a less value than 100 rupees. With these figures before me, I should anticipate a very considerable increase of registration were the proposed change in the law to be carried into effect; and I think that, unless the number of registration offices were also largely multiplied, the people would be put to very great inconvenience and hardship."

This statement showed that during the three years immediately preceding 1870 fully 25 per cent., or one-fourth, of the total registrations of deeds affecting immoveable property involved interests of less than 100 rupees in value; and this notwithstanding the fact that the bringing of such documents was a purely voluntary act on the part of the persons registering, to perform which they were placed under no compulsion by the provisions of the law as they then stood. It was fair to assume that if so large a proportion of written instruments affecting interests in immoveable property of less than 100 rupees in value were forthcoming for registration when such registration was optional, the number would be largely increased on the extension of the compulsory system; hence that, so far from the written transactions in regard to the transfer of minute interests in immoveable property being numerically or even proportionately too insignificant to make it worth while to legislate for their inclusion under the compulsory system, in Bengal at least, the numbers of such transactions were considerable, and in comparison with those covered by the present system probably even more numerous.

He (MR. COCKERELL) would submit, then, that if what was certainly the case as regards written transactions involving the transfer of interests in immoveable property in Bengal, in any approximate degree represented the state of things going on in the other older provinces of the empire, then there were very strong grounds, having regard to the stated objects of a system of compulsory registration, for removing the limitation to the completeness of that system.

The question then appeared to him to be narrowed to the single issue as to whether the existing registration machinery was yet sufficiently popularized and matured to admit of the classes who would b ought to the registration offices under an extension of the obligatory rule, resorting to those offices without dissatisfaction or inconvenience, and with but little expense and loss of time.

The hon'ble and learned mover had been so good as to send to him (MR. COCKERELL) the whole of the papers before the Government in

reference to difficulties and doubts that had occurred in connection with the working of the registration law since its enactment in 1871. That correspondence was certainly very bulky, and contained a great deal upon the subject of the registration of assurances; and it did not include any proposal or suggestion in the direction of the course which he was now advocating. Indirectly, however, these papers did furnish arguments for making compulsory registration absolute; for they afforded abundant evidence of the fact that great progress had been made in the improvement of the registering machinery, and familiarizing the people at large with the registration-system, its objects and advantages. In Bengal, a former Lieutenant-Governor (Sir George Campbell), about four years ago, introduced a system of rural registration offices the design of which was to bring the means of registering documents within easy reach of the people and to make the operation as little expensive as possible.

This system would appear to have attained very decided success, and to have resulted in the multiplication of registration offices in the interior of the districts, so as to give an annual increase of upwards of thirty such offices.

From these figures it was fair to assume that the registering machinery in Bengal had, since the time when the Registrar-General's above cited communication on the subject was made, been brought into such a condition of maturity and efficiency as would enable it to cope with the extra labour that would be thrown upon it by the removal of the existing limitation to compulsory registration.

The papers to which he had referred further showed that in the North-Western Provinces the registration-system had been rendered familiar and acceptable to the public, as was evidenced by the large proportion of optional registrations; that in the Bombay Presidency between two and three hundred sub-registry offices had been established, and that elsewhere the number of instruments brought for registration was progressively increasing. Contemporaneously with the multiplication of registry offices, there had been a general reduction of fees and cheapening of the process of registration.

It had been shown conclusively, moreover, that the popularity of the registration-system depended largely upon the degree of expense entailed by it on persons having documents to register, inasmuch as each reduction of fees was followed by an increase in the number of optional registrations. All that was wanted, therefore, was to multiply the number of registering officers and registration offices, and to reduce the registering fees, so as to place the

means of registering as near as possible to all persons having documents requiring registration, and to effect such a reduction of fees as to make the cost of registration a scarcely appreciable tax or burden in any case. Now this multiplication of registry offices and reduction of registration fees was a question of money; and if the Registration Department was worked at a loss, or only just self-supporting, it might reasonably be urged in opposition to his (MR. COCKERELL's) proposals that the introduction of the admitted necessary conditions of an unreserved system of compulsory registration of assurances relating to immoveable property was impracticable; but he found from the published returns of the income and expenditure of the Registration Department that in every province of the empire there was a more or less considerable margin of profit in the working of this Department. Going back to 1871-72, he found the following figures:—

					Rs.
Net profits in	Central Provinces	about	...	...	13,000
"	Bombay	"	...	...	22,000
"	Bengal	"	...	...	90,000
"	N. W. Provinces	"	...	...	1,20,000
"	Madras	"	...	...	1,00,000
"	Panjáb	"	...	...	60,000
"	Oudh	"	...	...	18,000

So that even in Oudh, to which the registration-system as regulated by the general law was only applied in 1871, there was a large proportionate excess of income over expenditure.

He had seen later returns in regard to the registering operations of some of these provinces, and they showed even larger profits: for instance, the profits in Bombay had risen to more than 50,000, and those in Bengal considerably above a lákh.

"Now, the Government in creating the present system of registration had, he believed, emphatically disclaimed any intention of making out of it revenue for appropriation to other purposes: it was only desired that the Department should pay its expenses—be self-supporting. Even after the income from this source had been assigned to Local Governments as a provincial asset, the principle of this policy had been adhered to, and one Lieutenant-Governor at least (Sir George Campbell) had in this Council insisted upon the necessity of the maintenance of an equilibrium between receipts and expenditure, declaring that the exaction of revenue out of registration for other purposes was contrary to good policy.

Assuming, then, that the Government had no intention of departing from this avowed policy in regard to the receipts of the Registration Department, he believed that they would be found sufficient to bear the increased cost of adequate registering agency and the reduction of fees necessary to the carrying out of a complete system of enforced registration of documents affecting titles to immoveable property without hardship or material inconvenience to the people. In this belief he would press upon the consideration of the Committee to which this Bill might be referred the question of the propriety of removing the existing limitation of compulsory registration in respect to *all* interests in immoveable property.

Passing from this very important question, which he had felt it his duty to bring prominently before the Council, he would now offer just two or three remarks on the details of the Bill.

In regard to section two, he wished to ask his Hon'ble and learned friend the mover whether in the event of a person who had executed an agreement to mortgage his property subsequently selling that property to another person, the latter, supposing him to be a purchaser in good faith, could be ousted from his purchase as the result of a suit by the person in whose favour the prior agreement had been executed against the vendor to compel the specific performance of the latter's agreement? Because if, as MR. COCKERELL apprehended, the purchaser could be so ousted, then he would clearly be a sufferer from the section referred to, under which the registration of the agreement, though it would operate in the case supposed as a material incumbrance on the property, would be optional.

Section 3 of the Bill also, he thought, was clearly wrong, inasmuch as, if he rightly construed its effect, it would operate to make the registration of such documents as (1) copies of decrees of the Civil Courts, (2) awards, (3) partition-deeds, and (4) bills of sale, if they affected interests in property the value of which was not less than 100 rupees, compulsory. He ventured to think that this result of the section as now drawn could hardly have been considered by its framer, because as regards the copies of decrees the provision would be tantamount to a complete reversal of the maturely determined rule on the subject adopted by the Council when the law was last under revision. The question of the enforcement of the registration of decrees was not only fully discussed in Committee, but the rejection of such a rule was adopted after a full debate on the subject by a large majority of the Council. And although that discussion and determin-

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ation of the question applied only to the case of decrees of a Civil Court, yet the arguments upon which that decision was come to would apply with equal force to written awards when made by, or under the direction of, a public officer and placed amongst the records of a public office, to partition-deeds when the property was revenue-paying land and the partition was made by revenue-officers, and also to certificates of sale when furnished by a revenue or other public officer. In all such cases the reason for exempting the documents from obligatory registration is, that the object for which such registration is designed has, as regards them, been already attained, through their having been placed amongst the public records accessible to all persons interested in obtaining information in regard to the property affected by them.

The Hon'ble SIR WILLIAM MUIR begged to say a few words in reference to what had fallen from Mr. Cockerell. His Hon'ble friend had quoted the opinion of the Government, North-Western Provinces, as favourable to the extension of compulsory registration to immoveable property below the limit of rupees 100. Having been the head of the administration in those Provinces at that time, the inference might be drawn that he was himself in favour of such extension. He could not of course call to mind now the correspondence which had passed so long ago. But his views were opposed to the extension in question; and so far as his recollection served, he thought there must have been some misapprehension as to the quotation which had been made by his Hon'ble friend. His opinion certainly at present was against the extension of registration in the direction proposed by Mr. Cockerell; and he entirely concurred with what had fallen from his Hon'ble and learned friend Mr. Hobhouse on the subject in last week's debate. SIR WILLIAM MUIR also concurred in the remarks which had been quoted by Mr. Cockerell from the report of the Registrar-General of Bengal. Looking to the vast number of transactions connected with the transfer of small landed properties, the ignorance of the great mass of the agricultural population concerned, and their limited means, he (SIR WILLIAM MUIR) should regard any attempt at the compulsory registration of all documents conveying rights in such small holdings as inexpedient. It would be an unnecessary expense to the small landholders, and a burden which they would feel to be most onerous. And certainly in his opinion the time had not come for any such extension.

He had thought it the more incumbent on him to express his opinion on this matter, as if silent he might have been regarded as holding views in accordance with what had been quoted as the opinion of the North-Western Provinces

Government, and the more especially as when the subject next comes before the Council, he would in all probability not be present there.

The Hon'ble Mr. Hope said that he had not intended to trouble the Council with any remarks on this subject to-day; but after what had fallen from his Hon'ble friend Mr. Cockerell, he felt that he could not allow the occasion to pass without expressing very strongly his dissent from the proposal to extend registration in the manner which Mr. Cockerell would desire. No doubt the transactions, to which his Hon'ble friend had referred, of rupees 100 and under were exceedingly numerous; we had no idea how numerous they were; but what he would deduce from that fact was that we had all the more reason for being extremely cautious in any attempt to carry our registration-system further down than it was at present, and in not, without most thorough inquiry, and without a concurrence of recommendation from all the Local Governments, compelling the registration of every petty transaction relating to property in land. This registration was in reality a very serious burden. It demanded money and time which poor people could exceedingly ill afford to lose—time not merely occupied in attending the registry office, but in marching perhaps 60 or 70 miles there and back, with all the expenses of the journey. He would also point out that it seemed to him that the very object for which the registration-system was introduced into the country gradually failed in proportion as you descended to the lower transactions. The great advantage of a registration-system was that a man who was about to purchase, or deal in property in any way, might know how far it was previously involved, and so might not subsequently be surprised at finding it burdened with debts or other incumbrances of which he had had no previous notice. But the more you got down to the small transactions amongst the body of the people, the better known every man's little affairs were. If a man, for instance, mortgaged his field for rupees 30, everybody in the neighbourhood would have heard him talk about it for a month or more, and perhaps have half a dozen disputes in public with the village baniyá who might be going to lend him the money. Those were petty matters which he was quite sure would always be perfectly well known and in which registration was not required at all. He would not now detain the Council with any further expression of his opinion on this subject, although that opinion might, he believed, be supported at much greater length; and he trusted that the Committee might not be considered to have had any instructions on the subject unless a motion were made regularly to the Council and it was decided that they should have such instructions.

The Hon'ble Mr. Hobhouse remarked that, if his motion was agreed to without amendment, he should hold, as Chairman of the Committee, that it was not competent to entertain so wide a question as the propriety of enlarging the area of registration. He therefore would suggest that his Hon'ble friend Mr. Cockerell should move an amendment.

The Hon'ble Mr. Bayley said that he understood that his Hon'ble friend Mr. Cockerell would put a formal motion before the Council that it should be an instruction to the Committee to consider the question of making compulsory the registration of all conveyances relating to land; and if so, he thought it was his duty to oppose it, because the point involved was one eminently for decision by the Executive Government and not by the Legislative Council, for the decision really turned on a question of executive administration. He did not wish to detain the Council very long, but as he had been in charge of the Registration Department—as Secretary in the Home Department or as a Member of Government—for a period of fourteen years, he thought he might speak with authority as to the present condition of registration. He did not think anybody would dispute that it was very desirable, if it were possible, that every written document which passed in any shape should be registered. If it were possible, he thought registration would be even more important with regard to moveable property than with regard to immoveable property, because, with reference to the latter, to a certain extent, there was already some sort of a system of registration in most Provinces, and, in some measure, a man might generally pretty well ascertain the title to the property which he was about to purchase; but the frauds which were committed with regard to contracts for moveable property were far more numerous and difficult to prevent, and if the documents creating such contracts could possibly be registered, he had no doubt that nobody who had really considered the subject would say that it would be most desirable. The real difficulty was that, practically, a perfect system of registration would be impossible, at least for very many years to come. When registration was first made over to Local Governments as an item of their provincial financial system, he recollected especially taking the objection that it would allow the Local Governments to expend the profits from registration otherwise than upon registration itself, which was not the policy which the Government of India desired to pursue; and he recollected when the question was again discussed after Lord Northbrook's arrival, that he directed him (Mr. Bayley) specially to watch the action of the Local Governments in that respect. Having therefore paid special attention to the progress of registration he was bound to say that he could not accuse any Local

Government of unfairness; but at the same time after watching the working of the different systems of registering machinery, although he was not in a position to speak with absolute authority without reference to official records, his impression from all the facts which were before the Executive Government was, that it would be very difficult to apply the compulsory system of registration even to those minor transactions to which Mr. Cockerell proposed to extend it. He thought, without wishing to flatter Sir William Muir, that his system of registration for the North-Western Provinces was distinctly the best and the most perfect of any in India, and the Council had already heard what Sir William Muir had said upon the subject, and how he considered it incapable of doing the work which his Hon'ble friend Mr. Cockerell proposed to put upon it. In some of the Provinces which MR. BAYLEY did not wish particularly to name the facilities for registration were very inferior; he was perfectly certain that it would be a most cruel hardship on the people to compel all the minor documents relating to immoveable property to be registered. Of course he had no objection to a reference to the Local Governments if His Lordship and the Council desired it to be made executively, and he had very little doubt himself what the result of that reference would be. He also wished to correct one statement which his Hon'ble friend had made regarding Bombay. The Bombay Government had been trying some experiments with regard to the mode of registration for the last few years, in which he (MR. BAYLEY) confessed he took some part; it was thought right that the Local Government should do what they considered proper in the matter, and on that ground they were allowed to carry out their measures without interference. The practical result, however, had been very greatly to reduce their income. There had been a bare equilibrium in last year's accounts. The Secretary of State indeed had noticed it, and there was very likely to be a deficiency this year. He thought that that state of things might be remedied, but it could only be remedied by a total re-adjustment of the system, and this would take some time to bring about. He did not wish to take up the time of the Council further; but as the motion to give this instruction to the Committee was about to be put to the Council, he wished to oppose it, although, as he had explained before, he had no objection to an enquiry as to the expediency of the measure being made executively. He had only to add that he did not concur in all the objections raised by his Hon'ble friend regarding the minor points in the Bill, which seemed to be matters more properly for discussion in Select Committee than by the Council.

His Excellency THE PRESIDENT suggested that the Hon'ble Mr. Cockerell should place his amendment in a definite form before the Council.

The Hon'ble MR. COCKERELL then put the question which he had raised before the Council in the form of a motion in the following words:—

"And that the Committee be further instructed to consider the propriety of removing all limitation to the compulsory rule in regard to the registration of instruments affecting any interest in immoveable property."

The Hon'ble MR. HOBHOUSE said that the observations which he had to make had been almost entirely anticipated by the remarks of his Hon'ble friend Mr. Bayley. He was quite certain that we could not enter upon any such question in the way that was proposed without consulting the Local Governments, and he felt certain that no Local Government would give us any opinion upon it without consulting the district officers in its own jurisdiction and those who were working the registry offices. Both the Collectors and the Registrars must be consulted. According to his experience, a consultation of that sort, extending all over India, would occupy at least a year and a half; then the matter would have to be very carefully considered here, and that again would occupy much time. He thought that the Select Committee would be placed in a false position if they were required to undertake any such work; it must be done by the Executive and thoroughly thrashed out before it could be usefully dealt with in Committee.

Then as to the necessity of passing this Bill. He did not mean to say that it contained anything of such pressing necessity, that we might not take the ordinary time to receive criticisms and do the work carefully. And if there were nothing in the Bill but trivial alterations, he would be content to shelve it, and to say, "Let all these little amendments bide their time, and let Government take the whole question into consideration." But there was one section in the Bill which related to a pressing question, and that was the section he had already explained, by which we proposed to deal with a defect which had already given rise to fraudulent practices. We had it stated by an eminent judicial authority in Bombay that suspicious cases had turned up owing to the gap in the Act, and he was apprehensive that as the flaw in the Act became known extensive frauds would be committed. He (MR. HOBHOUSE) therefore thought we ought not to make any long delay before we proceeded to remove that particular defect, though we need not be in such a hurry as to risk error.

With regard to the concluding observations made by his Hon'ble friend Mr. Cockerell, he thought he could give a perfectly satisfactory answer in reference to the question he asked about section 2. The case he put

was this: A person executed an agreement to mortgage; between the agreement and the execution of the mortgage the property was fraudulently sold by the owner and the purchaser proceeded to register his conveyance; and then he asked whether that purchaser was safe. He (MR. HOBHOUSE) conceived that if it was an honest purchase, the purchaser would be perfectly safe, though his vendor might have tricked the intending mortgagee. Therefore no difficulty would be likely to arise under the section. As to section 3, his impression was that some of the observations made by Mr. Cockerell were just, and care would have to be taken in Committee how that section was to be worded. He was not quite sure how the clause would construe if the exact words now used were retained, but he thought it might raise a question as to decrees of Court. Those however were matters which would be carefully settled in Committee. He would only say now, as a general principle, that it was not intended to enforce the compulsory registration of any of those instruments which were deliberately made optional when the Act was passed.

The Hon'ble MR. COCKERELL said that as he understood the adoption or rejection of the amendment which he had proposed to be the question now before the Council, he believed that he was in order in saying a few words by way of reply to certain observations which had fallen from certain hon'ble members opposite. His hon'ble friend opposite (Sir William Muir) had questioned the correctness of his statement as to the Local Government of the North-Western Provinces having in 1870 advocated the extension of the compulsory rule. He (MR. COCKERELL) could only say that the statement referred to was contained in a speech made in this Council upon the introduction of the Bill for the amendment of the registration law which subsequently became Act VIII of 1871. He presumed that the statement made in that speech rested on the authority of a communication from the Government of the North-Western Provinces about that period, but he had not had time yet to refer to the correspondence which took place in connection with that enactment, and so he could not on this occasion cite the precise authority upon which the statement rested. In regard to a remark from another Hon'ble member opposite (Mr. Bayley), he (MR. COCKERELL) should explain that the returns from which he had taken his figures representing the excess of receipts over expenditure in the Registration Department of the Bombay Presidency were for the years 1871-72 and 1872-73. Very possibly since that latter period the receipts had fallen off, but he had not obtained access to later returns, and could not therefore speak as to their effect upon the present question.

It only remained for him to say that as the feeling of the Council appeared to be decidedly against the course contemplated by the amendment, he would, with the President's permission, withdraw it. He had brought forward this question because he deemed it expedient that whenever the registration law came under revision by the Council, the original object and scope of the measure, and the imperfect extent to which they had been as yet carried out, should be kept steadily in view.

The Hon'ble SIR ANDREW CLARKE took exception to the principle involved in the objection raised by the Hon'ble Mr. Bayley in stating that the question was not one for decision by the Legislative Council but for the Executive Government.

His Excellency THE PRESIDENT remarked that if he understood his hon'ble friend Mr. Bayley correctly, he did not say that the case was one for the decision of the Legislative Council, but that any communication with the Local Governments could only be efficiently carried out in executive form, not by the Select Committee, who would probably take a year or more to consider the subject; and that he had no objection to undertake this enquiry on the part of the Executive Government. His Excellency presumed that that course would probably meet the wishes of his Hon'ble friend Mr. Cockerell. He thought that it had been clearly demonstrated by his Hon'ble friend Mr. Hobhouse that it would be impossible for the Committee satisfactorily to carry out those inquiries without hanging up the Bill for an indefinite period of time.

The Hon'ble MR. BAYLEY explained that what he meant, was that the actual efficiency of the registration-system was a matter which the Executive only could ascertain and decide upon.

The Hon'ble MR. COCKERELL then withdrew his motion and the original Motion before the Council was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bill be published in the *Gazette of India*, in English, and in the Gazettes of the various Local Governments, in English and such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

SINDH INCUMBERED ESTATES BILL.

The Hon'ble MR. HOPE introduced the Bill to relieve from incumbrances the estates of Jágírdárs and Zamíndárs in Sindh, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that on the last occasion when he had the honour to address the Council on this subject, he explained the necessity for, and the objects to be attained by, this Bill. He would now briefly state the measures by which it was proposed to effect those objects. He had pointed out that the Council had already passed four Acts somewhat similar to the Bill now before the Council. All those had certain phases in common; that was to say, we had an order vesting the estate in a manager, and upon the passing of that order all processes of the Civil Court which were pending, ceased and were barred, and no fresh proceedings could be instituted while the management existed. The debtor also was rendered incompetent to charge the estate further. We, likewise, had a provision for enquiry into the debts by the manager, and a scheme for liquidation, and powers were given to raise money. In those general features the Bill now introduced corresponded with the other Acts on this subject to which he had referred. Those Acts also differed in certain material points. The Ahmadábád Act of 1862, which was the first, could only be put in motion by the Executive Government itself, and the Executive Government was limited, in applying the Act, to estates the debts of which were not less than five years' income of the property; and it was further limited in that the management was not allowed to continue, in any instance, more than 20 years. The Chutiá Nágpur Act both allowed the Government to interfere when the estate in any way came into Court, and also provided for the Government being set in motion by the application of the parties themselves. The Oudh and Broach Acts again took what might be called a further step; they could only be applied when the party himself moved; the Government had no power to initiate any action. In that respect the Sindh Bill now introduced would follow the Oudh and Broach Acts. Another feature which the Ahmadábád Act did not contain, but which the Oudh, Broach and Chutiá Nágpur Acts did, was the provision that the Government should be at liberty, within six months, to withdraw from its interference with the property. If it found that the property was so hopelessly involved that it was quite impossible ever to extricate it, the Government was enabled within six months to throw up the whole affair and leave it to the Civil Court. The Sindh Bill now introduced followed that principle generally, but with this difference that, instead of only within six months, the Government was allowed to withdraw at any time before the final order sanctioning the liquidation-scheme was passed.

Again, the Chutiá Nágpur Act contained distinct instructions as to what the Government was empowered to provide for by rules, and in this respect the Sindh Bill followed the Chutiá Nágpur Act. That Act had also the peculiarity that it could apply to any landholder throughout the Province, but it was not intended, as he had explained last week, to go as far as that in Sindh, and the line had been drawn at landholders who paid direct to Government not less than rupees 300 per annum and upwards. Finally, the Sindh Bill, now introduced, had one novelty which none of the other Acts contained; it provided for a careful preliminary enquiry, based upon a statement made by the party himself on oath, as to the amount of his debts and liabilities, before any order of management could be issued at all. On the whole the course of legislation from 1862 had been in the direction of greater caution in applying these Acts and a more distinct definition of the purposes to which the power of making rules should be directed.

The Motion was put and agreed to.

The Hon'ble Mr. Hope moved that the Bill be published in the *Gazette of India*, in English, and in the *Bombay Government Gazette* and the *Sindh Official Gazette*, in English and such other languages as the Local Government might think fit.

The Motion was put and agreed to.

BOMBAY MUNICIPAL DEBENTURES BILL.

The Hon'ble Mr. Hope also introduced the Bill to amend the law relating to the transfer of Bombay Municipal Debentures, and moved that it be referred to a Select Committee with instructions to report in a month.

The Motion was put and agreed to.

The Hon'ble Mr. Hope also moved that the Bill be published in the *Gazette of India* and the *Bombay Government Gazette*, in English.

The Motion was put and agreed to.

STAGE CARRIAGES ACT AMENDMENT BILL.

The Hon'ble Mr. Bayley introduced the Bill to amend the Stage Carriages Act, and moved that it be referred to a Select Committee with instructions to report in a month. He said that he had already explained that the object of this Bill, introduced chiefly at the request of the North-Western

Provinces Government, was to place certain carriages drawn by camels under the operation of the existing law. As it was known that similar carriages were also drawn by oxen, and that as the abuses which necessitated the introduction of the proposed Act, applied in an almost equal degree to conveyances of this description, it had been proposed to include the oxen under the Bill; and as the object of the Bill was one to which nobody could take any objection, it was also proposed to extend it to the whole of India. A provision was however inserted that the Bill was not to supersede or set aside the provisions of any local law on the same subject. The reason of that was that there were certain municipal regulations in towns which met the object of this law and other objects besides, and which might be contravened, and be very difficult to work, if the Act was permitted to interfere with them.

The Motion was put and agreed to.

The Hon'ble MR. BAYLEY also moved that the Bill with the Act which it extends, be published in the *Gazette of India*, in English, and in the Gazettes of the various Local Governments, in English and such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

TREASURE TROVE BILL.

The Hon'ble MR. BAYLEY asked leave to postpone his motion for leave to introduce a Bill to amend the law relating to Treasure Trove.

Leave was granted.

OPIUM BILL.

The Hon'ble SIR WILLIAM MUIR asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the law relating to Opium.

Leave was granted.

OUDH LAWS AND LAND-REVENUE BILLS.

The Hon'ble MR. INGLIS moved that His Honour the Lieutenant-Governor of the Panjáb be appointed a Member of the Select Committee on the Bill to declare what laws are in force in Oudh, and on the Bill to consolidate and define the law relating to the settlement and collection of land-revenue in Oudh. He explained that as Sir Henry Davies had a few years ago been Chief Commissioner of Oudh, the Select Committee were anxious to take the oppor-

tunity of his presence at Simla to obtain his assistance in settling the Bills now under consideration. His Honour had also kindly consented to act.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to amend the Indian Registration Act, 1871,—The Hon'ble Mr. Bayley, the Hon'ble Mr. Inglis, the Hon'ble Mr. Hope, the Hon'ble Mr. Cockerell and the Mover.

On the Bill to relieve from incumbrances the estates of Jágírdárs and Zamíndárs in Sindh,—The Hon'ble Mr. Hobhouse, the Hon'ble Sir Alexander Arbuthnot, the Hon'ble Mr. Cockerell and the Mover.

On the Bill to amend the law relating to the transfer of Bombay Municipal Debentures,—The Hon'ble Mr. Hobhouse and the Mover.

On the Bill to amend the Stage Carriages Act,—The Hon'ble Mr. Hobhouse, the Hon'ble Mr. Cockerell and the Mover.

The Council adjourned to Thursday, the 6th July 1876.

SIMLA;
The 29th June 1876.

WHITLEY STOKES,
Secretary to the Government of India.
Legislative Department.

Govt. Central Branch Press, Simla—10 7-76.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Government House on Thursday, the 6th July 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble John Inglis, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble F. R. Cockerell.

TREASURE TROVE BILL.

The Hon'ble MR. BAYLEY asked leave to postpone his motion for leave to introduce a Bill to amend the law relating to Treasure Trove.

Leave was granted.

OPIUM BILL.

The Hon'ble SIR W. MUIR presented the Report of the Select Committee on the Bill to amend the law relating to Opium.

He said that the Bill had been greatly enlarged and improved. It now embraced and consolidated the whole of the existing laws relating to opium throughout India excepting only the Bengal law. In amalgamating the Bombay law with the provisions of the Bill he wished to acknowledge the valuable assistance the Committee had received from his Hon'ble friend Mr. Hope.

The laws on the subject for Bombay and for the Panjáb, and the miscellaneous enactments on the subject elsewhere, had been all repealed, and such of

their provisions as were approved had been consolidated in the revised Bill. And thus for the future there would be but one law throughout India regulating the procedure for opium. As originally drawn, the Bill was confined to provisions for the growth of the poppy, and the possession, sale and transport of the drug. As amended, it provided also for the import, export and warehousing of opium; in respect of all which matters the Government would have power to make rules giving it an absolute control.

The law under which the opium monopoly on this side of India was conducted had been left untouched, as it was purely local in its application. When introducing the Bill, he had explained that it had no immediate bearing on the systems or methods under which the opium revenue was administered. Personally he entertained strong objections to the Bengal system of a State monopoly and manufacture; and for his own part he should greatly prefer to see the Bombay system of levying the revenue by an export duty introduced, under proper checks as to cultivation, on this side of India also. He trusted that some day the experiment would be made in some of the districts of Upper India to see whether the Bombay system could not be successfully substituted for the monopoly without any undue financial risk. There was nothing in the proposed law that would not consist with such a trial. But the Bill of itself introduced no change; things would remain as they were until it should be the will of the Government to make any change. The Bill in fact had no bearing either one way or the other on the policy of Government in respect of the diverse systems prevalent in different parts of India.

There were no other parts of the Bill requiring special explanation. But he might mention that great pains had been taken by the Committee in drawing sections 14 and 15 so as to give full power of seizure and arrest without too greatly enlarging the discretion of the Police and other subordinate establishments. It had been their care on the one hand to confer such absolute and summary power as was needed for the suppression of smuggling and other illicit practices, and on the other to limit, as far as possible, the openings and occasions for oppression and abuse. With the same view it had been provided in section 21 that any officer making an arrest or seizure should report the same within eight-and-forty hours to his departmental superior.

The Bill had been so considerably enlarged and amended that the Committee had directed its republication in the *Gazette of India* and the local Gazettes.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. COCKERELL asked the President's permission to make a personal explanation in reference to certain statements made during the debate on the Registration Bill at the last meeting of the Council.

THE PRESIDENT having accorded the permission asked for, MR. COCKERELL proceeded to remind the Council that during that debate he had read an extract from a speech made by the Mover of the Registration Bill of 1870-71 on the occasion of its introduction into the Council, attributing to the local Government of the North-Western Provinces opinions in favour of the extension of the compulsory system of registration, which he (MR. COCKERELL) was advocating, and that the Hon'ble Member who was formerly Lieutenant-Governor of the North-Western Provinces (Sir W. Muir) had virtually contradicted this statement on the ground that he had been at the head of the Government of the North-Western Provinces at the time referred to, and that he was not now, and had not then been, in favour of extending the area of compulsory registration. The statement must have been made upon some misconception of the real facts of the case.

In reply to this assertion, he (MR. COCKERELL) could only then say that the statement referred to by him was contained in a speech made towards the close of the year 1870; that he had no doubt as to the statement having been made on sufficient grounds, but he had not had time to refer to all the connected papers and ascertain the precise authority upon which it was made.

As the speech from which he (MR. COCKERELL) had then quoted was his own—for he had charge of the Registration Bill of 1870-71—it concerned him very materially to trace the authority for the statement referred to, and to show that it had not been made without good foundation.

Since the last meeting of the Council he had been able to trace the correspondence which contained the authority for the statement in question, and he would now, with the permission of the Council, read extracts therefrom, which would show conclusively that that statement was *absolutely* correct.

In a letter addressed by the Government of the North-Western Provinces to the Government of India, dated 29th August 1870, the Secretary Mr. Elliott wrote—

* * * * * *

(Para. 7.) "The country has now become accustomed to the Registration Act, and His Honour submits as worthy of consideration whether the provisions of that Act might not be extended to alienations of landed property under rupees 100 in value." * * *

It was noticeable that this communication was not made in connection with any projected alteration of the Registration law, but in reference to certain other proposals for special legislation to prevent fraudulent transfers of property, and it was apparently an entirely spontaneous suggestion not founded upon the reports or recommendations of subordinate officers.

Very shortly afterwards in a letter addressed to the Government of India bearing date 14th September 1870, and having direct reference to the amendment of the Registration law, Mr. Secretary Elliott wrote:

* * * (Para. 2) "Adverting to paragraph 3 of Mr. Johnston's letter," [Mr. Johnston being at that time the Registrar-General of the North-Western Provinces, and having then, as previously, expressed himself strongly in favour of the extension of compulsory registration,] "suggesting the abolition of the limit of rupees 100 as regards the compulsory registration of instruments affecting immoveable property, I am to refer to the remarks contained in paragraph 7 of my letter No. 438A, dated 29th August, in which this change was advocated,"

thus confirming the previously expressed view in favour of the course which he (Mr. Cockerell) had recommended.

Several months after the date of this letter, the Government of the North-Western Provinces, in forwarding a communication from the local High Court, which strongly opposed the proposal to extend compulsory registration, observed in reference to that communication:

"The Court's remarks on this head are entitled to much weight, and on a reconsideration the Lieutenant-Governor would withdraw his previous recommendation proposing the abolition of the limit."

This letter was dated the 21st March 1871, and Act VIII of 1871 was passed on the 24th March of that year. So that not only had he (Mr. Cockerell) no knowledge of this recantation of its former deliberately expressed opinion, on the part of the Government of the North-Western Provinces, when he made the statement founded on the earlier communications above referred to, but inasmuch as the later letter did not reach the Government of India until after the passing of the Act—and with that event his personal connection with the question ceased entirely—this change of views never came to his knowledge, and he was not aware of it when he last addressed the Council on the subject. In tracing the authority for the original statement he had been led to the discovery of this enunciation of a change of opinion on the part of the Government of the North-Western Provinces in regard to the question lately under discussion.

As regards the contradiction of the statement under such circumstances, he could only suppose that the Hon'ble Member (Sir William Muir), whilst mindful of the view to which he had been apparently converted by the High Court, and continuing to maintain that view, had forgotten that he had at one time held or expressed a directly opposite opinion.

The Hon'ble SIR WILLIAM MUIR begged permission to add a few words to the effect that the statement which had just been made by his Hon'ble friend Mr. Cockerell was quite correct as to the facts. Mr. Cockerell having on a former occasion quoted the opinion of the North-Western Provinces Government, he (SIR WILLIAM MUIR) had felt bound to say that his views differed from those assigned to him in the passage quoted, and that he thought there must have been some misapprehension on the subject. The misapprehension into which his Hon'ble friend had fallen had now been satisfactorily explained, from his not having been cognizant of the final report submitted by him (SIR WILLIAM MUIR) as Lieutenant-Governor, in which he had, on mature consideration, expressed his opinion as adverse to the change now advocated by Mr. Cockerell. The explanation was therefore entirely satisfactory both as respected himself and his Hon'ble friend.

The Council adjourned to Thursday, the 27th July 1876.

SIMLA;
The 6th July 1876.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla—10-7-76.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Government House on Thursday, the 27th July 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *Presiding.*

His Honour the Lieutenant-Governor of the Panjáb.

His Excellency the Commander-in-Chief, K. C. B.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble T. C. Hope.

The Hon'ble F. R. Cockerell.

OUDH LAND-REVENUE BILL.

His Honour THE LIEUTENANT-GOVERNOR presented the Report of the Select Committee on the Bill to consolidate and define the law relating to the settlement and collection of land-revenue in Oudh. He said that the Bill was originally introduced in 1872 by Sir John Strachey, in consultation with the Chief Commissioner, Sir George Couper, and the Judicial Commissioner, Mr. Currie, who had been intimately connected with the affairs of the Province from its annexation. The Bill was originally drawn on the lines of the Land-Revenue Act for the Panjáb, but intermediately the Bill for the North-Western Provinces was brought forward and the original Bill was considerably modified in accordance with the provisions approved for the North-Western Provinces Land-Revenue Act. Subsequently, the measure was submitted to all the officers of experience in Oudh, and had been minutely revised, and the recommendations of the local officers had been carefully considered by the Select Committee. He had only now to explain the amendments, or rather the more important amendments, which had been made

in Committee. The Council were aware that the proprietary rights in the soil in Oudh were divided among, first, Taluqdárs and other proprietors, in direct relations with the Government; secondly, village communities holding wholly or partly in common, who were jointly responsible for the rents for which they were liable to their superiors; and, thirdly, subordinate holders, who had no common fiscal liabilities, but were in possession of holdings for which they paid rent to their superiors It was owing to the relations between those several classes that the present Bill differed in some of its provisions from the Bills which were approved and passed for the Panjáb and the North-Western Provinces; and the principal amendments which had been made by the Committee related mostly to the relations between those several classes. He would now go through those amendments.

Section 26, as it was originally drawn, allowed the Chief Commissioner to select with which of the two classes, having property in the same mahál, a settlement should be made. Instead of that, it was now provided that in taluqdárí maháls the settlement must be made with the Taluqdár. That was in conformity with the fact, as the settlement had actually been made in the Province, and it was also in accordance with the status conferred upon the Taluqdárs by the Government under certain political engagements. Further, it was certainly for the advantage of the Government revenue that the settlement should be made with the Taluqdár, who had, generally, the larger interest in the property. By section 32 it had been made necessary that the sanction of the Governor General in Council should be obtained before any Taluqdár should be excluded from the settlement of his entire taluqá. That was also done in consideration of the peculiar status conferred upon the Taluqdárs under the political engagements previously referred to. It had been thought proper that with regard to so severe a measure as the entire exclusion of proprietors of what were frequently very large estates from settlements of this kind that the sanction of supreme authority should be first obtained. In practice it had been found that the Taluqdárs had had considerable difficulty in realizing their dues from village communities. Many of those village communities had been in antagonism with the Taluqdárs in former days, and they had not shown that readiness in paying their dues to the Taluqdár that might have been expected from them. It had, therefore, been thought necessary to make some provisions by which the Taluqdár, who was directly liable to the Government for the payment of the revenue, should have certain facilities for collecting his rents from those village communities.

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Section 40, therefore, made the under-proprietors jointly and severally responsible for the payment of the dues determined by the Settlement Officer. That, it was believed, would not only be for the benefit of the Taluqdárs, but also for the benefit of all superior proprietors in direct relations with the Government. Section 150 enabled proprietors to apply to the Deputy Commissioner to realize arrears of rent due under a sub-settlement or lease as arrears of revenue. That amendment rested very much on the same reasons as those which he had given with regard to section 40. It had not been thought proper to give the Taluqdár himself the power of realizing his rent as arrears of revenue from the under-proprietors; but it had been considered necessary, when he was in extreme difficulties, owing to the recusancy of those under-proprietors, that he should be enabled to go to the Deputy Commissioner, who would assist him to realize his dues in the way described, thereby saving him great expense and much litigation. On the other hand, some of the amendments were in favour of the inferior classes having interest in the land. Section 135 empowered the Deputy Commissioner to make sales subject to incumbrances. In the present day, sales for arrears of revenue were not common, but, of course, that was the ultimate safeguard of a land-revenue, and it was necessary to contemplate such a possibility. But this amendment mitigated the severity of the original law and protected the subordinate holders whom he had already referred to as having an interest in the land, and, under certain circumstances, it maintained their right intact when the whole mahál was sold for arrears of revenue. Again, section 158, which declared when a proprietor was to be deemed a tenant with a right of occupancy, differed from the Panjáb Law. That amendment was also in favour of the old village proprietors, and he considered it a great improvement on the Panjáb Act.

Those, he thought, were all the principal amendments touching on the relations of the several classes having various rights in the soil; but an important innovation had been made in chapter V. According to the proviso which would be found in section 95, the imperfect partition of a joint estate could, under this law, be made with the consent of recorded co-sharers holding in the aggregate more than a moiety of the property. There had been some discussion as to the propriety of that proviso; but it was strongly supported, on practical grounds, by the whole of the Revenue Officers in Oudh, as well as by the Chief Commissioner and the Judicial Commissioner, and His Honour himself entirely approved of it. The theoretical objection to it was, that you ought not to maintain the joint fiscal liability of the co-sharers of a man who wished to get the sole management of his share; but, in practice, it had always

been found that the people themselves were perfectly content with what was called 'imperfect partition'—that was to say, leaving the common fiscal liability of the co-sharers in the mahál untouched, and granting the individual holder the sole management of his land.

By section 174, persons whose property was under the superintendence of the Court of Wards were declared incompetent, without the sanction of the Court, to create charges upon such property. Such a restriction had been proved by experience to be absolutely necessary to the restoration of encumbered estates to state of solvency.

There was, also, in section 14, an administrative change which was, he thought, an improvement on the original Panjáb Act. It left the specification of documents which were to compose the settlement record to the determination of the Chief Commissioner. He thought that this matter might well be left to the Chief Commissioner's discretion from time to time, and that its exclusion from the body of the Act was an improvement.

Under section 208 the Chief Commissioner was empowered to make rules for the appointment of patwarís; but he would explain that although this provision was put into the Bill, and it would certainly be much the best administrative measure, still there were some objections of the Taluqdárs which remained to be considered, and which his hon'ble friend Mr. Inglis who had most carefully watched over the Bill during its progress would now consult them about.

The Committee had ordered the republication of the Bill, and he believed it would be brought up again after two months' time; but it had been so thoroughly considered by every body who was entitled to have a voice in the matter, including the Taluqdárs, that he hoped that the Bill, which had now been so long before the Council, would be passed at Simla during the present year.

His Honour had only to add that he had gladly availed himself of His Excellency the President's permission to take part in maturing the Bill, having been so long associated with all the classes concerned in Oudh, and retaining a lively interest in the prosperity of the Province.

His Excellency THE PRESIDENT remarked that the Government was very much obliged to His Honour for his assistance in placing the Bill in the shape in which it was now before the Council.

OUDH LAWS BILL.

The Hon'ble Mr. Hobhouse, presented the report of the Select Committee on the Bill to declare what laws are in force in Oudh.

He said that there was no motion before the Council, and he might present the Report without saying a word. But as three years had elapsed since the Bill was introduced, and no report had been made in the meantime, it would facilitate the final consideration of the Report, which he hoped would take place before they left Simla, if he stated now the principal operations that had been performed, and the existing frame of the Bill.

The reason why this matter had been so long delayed was that it was closely connected with the Oudh Land-Revenue Bill now in the hands of his friend Sir Henry Davies, and it had been thought desirable to pass the two at the same time. And though no great amount of discussion had arisen on the Laws Bill, a great deal had arisen on the Land-Revenue Bill. That discussion had been carried on principally between the Local Government, its officers, and the Associations or leading individuals who represented the landed interest in Oudh. It was that circumstance which had prevented the Committee from reporting to the Council. Last year there were many meetings of the Committee, and much work was done upon both Bills; but it was found more convenient to send the results to the Local Government for local discussion than to bring them before the Council, and publish them in the usual way. They had now passed the Bills through Committee again, and had reached the stage in which republication was desirable; and he hoped it would prove to be the penultimate stage of this long business.

When he introduced the Laws Bill, he explained to the Council at considerable length what was the condition of the law which made such a Bill as this desirable. Considering the lapse of time and the great changes which had taken place in the composition of the Council, it might be necessary for him, when they came to consider the Report, to recapitulate the heads of that explanation. But it was not necessary for the present purpose. He would now only remind the Council that the principal sources of law in Oudh were three :—

First, there were the enactments which, in their inception or by subsequent extension, were expressly applied to Oudh, either alone or as part of British India.

Secondly, there was the spirit of the Panjáb Civil Code corrected by Oudh customs; and the Panjáb Civil Code was itself the spirit of the Bengal Regulations corrected by Panjáb customs.

Thirdly, there was a quantity of executive orders, unknown and unascertainable except by judicial decision, which were supposed to have acquired the force of law by virtue of the Indian Councils Act of 1861.

The Bill was framed for the purpose of getting rid of the extreme uncertainty and obscurity which hung over the two latter sources of law, and of laying a solid foundation for Oudh law similar to that which was laid for Panjáb law by the Panjáb Laws Act.

The principles of the Bill were as follows: It took hold of the Bengal Regulations which were wanted in Oudh, and expressly extended them to Oudh with the modifications which experience had shown to be proper. All other Bengal Regulations it repealed. It embodied those executive orders which were meant to have the force of law; and all other orders which might be held to have acquired a legislative character under the Councils Act it repealed. Those repeals got rid of the shifting and uncertain elements which at any moment might be unexpectedly erected into law, or unexpectedly denied to be law. It set up personal laws and customs in such matters as marriage, inheritance and other domestic questions of families and communities. It also set up local customs and mercantile usages in all questions. And the most bulky, though not the most important, part of the Bill contained certain special provisions, of which some had grown up as law in Oudh by virtue of judicial decisions, some were taken from the Panjáb Civil Code, and a small portion were innovations supposed to be desirable to introduce.

Such was still the form of the Bill, but the part which contained the special laws had been considerably abbreviated, as might be seen by comparing the two drafts. And he had now to state what alterations the committee had made and why.

In the Bill as introduced the special laws occupied the third part, and the first chapter of that part related to the subject of Minority. That was now omitted for the following reasons: So far as regarded European British subjects, the Legislature had provided for their case by the Act of 1874 passed since the introduction of this Bill. As regarded Natives, several questions were raised by them, which led the Committee to reconsider the expediency of making any express enactment on this subject. And they thought that the wants of the community would be fully provided for by Act XL of 1858, which related to non-Europeans, and by the family or local customs prevalent in Oudh. That ocurse had been adopted in the Panjáb, and they had the authority of Sir H.

Davies for saying that it was perfectly satisfactory. They had therefore given that turn to the Bill.

The next chapter related to the Court of Wards, and it had been found more convenient to transfer it to the Land-Revenue Bill, because the Revenue procedure was properly applicable to that Court. It had accordingly disappeared from the Laws Bill.

The next chapter related to betrothals of Hindús and Muhammadans, and he might apply to it very nearly the same observations which he had made on the Minority chapter, except that there was no enactment relating to the subject, and that the law would rest entirely on custom.

In that which was originally the fifth chapter and was now the second, the chapter which related to pre-emption, the principal alteration was that the Committee had applied the right of pre-emption to foreclosures of mortgages as well as sales. Here again they had followed the Panjáb precedent. The Council must not disguise from themselves that this was a considerable extension of the custom of pre-emption; a custom to which many experienced officers objected, as one peculiar to the Muhammadans, and not known to the Hindús till introduced to them by our Government, and as interfering with the lawful transactions of mankind. On the other hand, it was said that, however introduced, the privilege was much valued, and that it beneficially retarded the disintegration of the village communities That those communities had been held together by external pressure, and that they must dissolve under the influences of prolonged peace, equal laws, fixed revenue assessments, and increasing value of land, seemed certain. But when any social change, however inevitable, took place with great rapidity, it was both a painful thing and a dangerous one; and the practice of pre-emption appeared to supply a welcome and a healthy check to the too rapid progress of disintegration. The Hindú societies appeared to feel the relief afforded by it, and the Taluqdárs Association told them that the privilege was beneficial to the Hindús. The Oudh authorities concurred with those of the Panjáb in recommending an extension of the principle, and the Committee had followed that advice.

Another portion of the original Bill which had disappeared was a part of the fifth chapter relating to the subject of partition of estates. But it had only been transferred to the Land-Revenue Bill for the same reasons which applied to the Court of Wards.

A portion of chapter VI of the original Bill consisted of provisions for insolvency. The principal reason why they were inserted was that the Panjáb Laws Act contained such provisions. But they appeared to be little used in the Panjáb, and, when used, to be little esteemed. Nor was it easy to see why there should be a special law on this subject for such a province as Oudh. The subject was one which was being dealt with in the new edition of the Civil Procedure Code, which was now before the Council, and on which the Committee hoped to present a Report before they left Simla. It would be better to include Oudh in the general law, and therefore this subject was struck out of the category of special laws for that province.

Another portion of Part III of the original Bill related to cases where a person died intestate leaving moveable property which was unclaimed. The Committee found that those cases were sufficiently provided for by a section of the Police Act of 1861, which extended to Oudh, and they therefore struck out the provision from this Bill.

Another portion of the same Part related to juries in civil cases in Lucknow. That practice rested on the authority of a letter from the Foreign Department, written prior to the Councils Act of 1861, and it was quite peculiar to the city of Lucknow. Fault was found with it by the Jalsa-i-Tahzíb, one of the Native Associations. The Chief Commissioner had stated that it was very rarely put in force, and that there was no reason why Lucknow should differ in this respect from all the rest of India. The Committee had therefore omitted it from the special laws of Oudh.

Chapter VIII of the Bill as introduced related to hidden treasure. That, however, was a subject on which it was intended to pass a general measure. Indeed, a notice to that effect was in the list of business, a little while ago, in the name of his friend Mr. Bayley, but dropped out again. At present the measure remained a hidden treasure in the breast of his hon'ble friend. But it would soon come to light, and it would be better to pass no special or local law in the meanwhile.

Chapter IX of the Bill as introduced related to military cantonments and bazars. It was a reproduction of the Bengal Regulation; one of those Regulations of which the spirit passed to the Panjáb and from the Panjáb to Oudh. He mentioned at the time that lawyers were very shy of dealing with these military affairs, and it turned out that it would have been

better to let them alone. When the Regulation, which was more than sixty years old, came to be expressed in modern legal language, differences of opinion arose as to the propriety of re-enacting the whole of it, and as to the modifications it might be expedient to effect. And then the Commander-in-Chief very reasonably objected to have a local law, differing in some, though it might be in slight, particulars from the general law, for a subject of such general concern as that of cantonments. So the Committee had left the law where it stood, on the footing of Regulation XX of 1810, only taking care to provide for the express application of that Regulation to Oudh.

The principal additions the Committee had made to the Bill would be found in the fifth chapter. They related to Village and Road Police, and had been drawn from the Police Act passed for the North-Western Provinces in the year 1873.

There were of course a number of smaller alterations which were mentioned in the Report he was now presenting. He had stated to the Council the nature of the larger alterations which accounted for the different appearance which the Bill had now assumed.

The Council adjourned to Thursday, the 7th ~~August~~ September 1876.

SIMLA;
The 27th July, 1876.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No 818 L. D.—18-4-83.—50

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Government House on Thursday, the 7th September 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble T. C. Hope.

The Hon'ble F. R. Cockerell.

CIVIL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the further Report of the Select Committee on the Bill to consolidate and amend the Laws relating to the Procedure of the Courts of Civil Judicature.

Leave was granted.

INDIAN RAILWAY BILL.

Colonel the Hon'ble SIR ANDREW CLARKE moved for leave to introduce a Bill to consolidate and amend the law relating to Railways in India. He said that the necessity for the Bill had arisen out of a failure to protect lines under construction, and it was now intended to extend to lines under construction the same protection as was in force on lines open for traffic. It was also proposed to take this opportunity of consolidating four of the five Acts which contained the law relating to Railways in India. The remaining Act being superseded by a Bill which was already before the Council in reference

to the Presidency Police Magistrates. The proposed measure was not one with regard to which any difficulty or embarrassment was likely to occur; but in order to guard against possible misconstruction, out of doors, he thought it right to say that the Bill was unlike the Bill of 1867, which gave rise to opposition on behalf of certain interests in connection with the Guaranteed Lines. The present Bill in no way interfered with those interests or attempted to define the terms of the contract under which they were created.

The only other new feature in the Bill related to one or two points which had been overlooked in former Acts; and further security was now sought on behalf of the public, indeed also for the Railways. It was also found that doubts existed as to whether those who were employed about Railway stations in the performance of certain duties, connected with the Railway carrying trade employed under contract, could come under the name of servants of the Company or not. It was found, especially at the larger stations, that by their not being included in the provisions of the Act, they could not be punished for extortion, or for refusing to do certain duties as Railway servants; and opportunity would now be taken to remove those doubts.

With His Excellency the President's permission, a very important movement had been initiated in the Conference regarding Railways which was to assemble in Calcutta next cold season; and it was possible that, upon that occasion, some further measures, the results of the rapid growth and development of Railways, might be suggested. He would, therefore, only ask that the Bill should now be introduced to the Council, with a view to its publication, and that no final steps should be taken with reference to it until we had had the opinion of that body on it, who would no doubt also afford much assistance in considering whether there were any other points relating to this subject on which it would be desirable to legislate.

The Motion was put and agreed to.

BOMBAY MUNICIPAL DEBENTURES BILL.

The Hon'ble Mr. Hope presented the Report of the Select Committee on the Bill to amend the law relating to the transfer of Bombay Municipal Debentures.

SINDH INCUMBERED ESTATES BILL.

The Hon'ble MR. HOPE also presented the Report of the Select Committee on the Bill to relieve from incumbrances the estates of Jágírdárs and Zamíndárs in Sindh.

LAND IMPROVEMENT BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to amend the Land Improvement Act, 1871, and moved that it be referred to a Select Committee with instructions to report in six weeks.

This was a Bill which he got leave to introduce a considerable time ago; but its introduction had been delayed from various causes. The object of it was a single one, namely, to make clear what was the nature of the security that the Government took for the advances that it made to landowners. The Council were aware that the whole object of the Land Improvement Act was to enable the Government to make advances for the improvement of land, and to recover those advances, from the borrower, or his security, in the way in which land-revenue was recovered. He was glad to say that no disputes had arisen hitherto between the borrower and the lender, although there had been a considerable amount of advances made under the Act, especially in the provinces of Bengal. But, on coming to apply the terms of the Act to the recovery of advances, it had been found that there was a little difficulty in making them fit the facts, and some high officials—Local Governments, Secretariats, and Government lawyers—had differed as to the exact meaning of the Act. It was, therefore, desirable that we should make that matter quite clear before any disputes arose between ourselves and those persons to whom we had lent money. Fortunately, there could be little or no doubt as to the principles on which the recovery of such advances ought to be based, and on which every body considered that they had in fact been made.

The difficulties of the Land Improvement Act were as follows: By section 14 the Collector who arranged for the advances was to grant a certificate which, amongst other things, was to specify the position, extent and boundaries of the land to be improved, and the nature and amount of the security furnished, if any, other than the land to be improved. Then the next section—section 15—provided that the amount so specified should be recoverable from the borrower, or his security, as if they were arrears of

land-revenue due by the borrower, or his security; and the section proceeded thus:

"If any such sum cannot be so recovered, it shall be recoverable as if it was an arrear of revenue due on *the land specified in the said certificate*.

"Provided that when the person to whom the advance was made is a landlord or a tenant having a right to transfer his interest in the land without the consent of the landlord, the interest of *no person, other than such landlord or tenant, in the said land,* shall be sold under this section."

Now, on those sections arose three or four questions. The first question was, whether the improved land was so subjected to the charge, that the charge should take effect prior to all other interests in the land, in the same way as arrears of land-revenue would take effect? So that, for instance, if there was a prior mortgage, the advance should be recovered in preference to the right of the mortgagee to recover his debt. That was the first, and most important, question, and he thought that it was also, fortunately perhaps, the least doubtful.

The second question was, whether land given by way of collateral security stood in the same position as the land to be improved? The Council would see that, in respect to this point, the language used was, "land specified in the said certificate." Both kinds of land were to be specified in the certificate, and therefore, under the strict literal construction of the Act, it would seem that both kinds of land were placed in the same position.

The third question was, whether you could avail yourself of all your remedies against the principal, without using the remedies against the surety? Again, on the strict literal construction of the Act, it would seem that we were forced to sue the surety before all the remedies against the principal were exhausted, which was not at all a just proceeding, and was probably one that nobody would desire.

The fourth question was, what was the meaning of the proviso to the fifteenth section of the Act which he had read at length? The language no doubt was obscure, and he had been told by those who understood this subject that the obscurity lay in the word 'interest,' which, to the mind of a plain unsophisticated lawyer, bore one meaning, and to the mind of those learned in land-revenue tenures, such as the gentlemen in the Department over which his hon'ble friend Sir Alexander Arbuthnot presided, bore another. He however believed

the real meaning was, that if the borrower was a landlord, you should not sell the tenant's interest, and that if the borrower was a tenant, you should not sell the landlord's interest.

Fortunately, as he had said, it was very clear what the principles were which should regulate the recovery of those advances; and, in the first place, he thought there could be no doubt in any body's mind that the improved land ought to be subject to the charge in precisely the same way as it was subject to the imposition of land-revenue. That was the general principle—he believed it, indeed, to be the universal principle—on which advances for improvement were made, whether in England, the United States, or India. The advance was for the improvement of the common possession into however many interests the whole ownership might be divided; and, of course, nobody would make the advance unless he was to have the first fruits of the improvement effected by means of the advance.

It seemed equally clear that land given by way of collateral security ought not to be placed in the same position. The surety who gave the land as security derived no advantage from the advance made by way of improvement. It was not his land that was improved, and all persons—mortgagees or others—who had a subsidiary interest in the land, might be materially injured, if the Government were to come in ahead of them and claim to be repaid out of land upon which they had never spent a farthing. Therefore, it ought to be provided that, with respect to land given by way of collateral security, the Government should come in just in the same way as any other lender of money.

He did not think that there was more doubt on the third question, but that we should be at liberty to treat the surety and the principal according to the ordinary rule. Certainly sureties would be exceedingly astonished if they were told that the land of their principal was available in the ultimate resort for the repayment of the money spent upon its improvement, but that the Act was so framed, that we were absolutely compelled to make the surety repay that money before we could proceed to sell the land.

The proposed Bill accordingly dealt with these points, and section 2 provided that advances should be recoverable in all, or any, of the following ways:—

(*a*) from the borrower as if they were arrears of land-revenue due from him:

(*b*) from the surety (if any) as if they were arrears of land-revenue due from him:

(*c*) out of the land to be improved as if they were arrears of land-revenue due on account of such land:

(*d*) out of the property comprised in the collateral security (if any) according to the terms of such security.

That seemed to him to do justice to all parties, and the remedies which were concurrent would, no doubt, be put in force, according to the justice and expediency of each case.

Then there was added to section 2 a proviso expressing what was intended to be expressed in the Act of 1871; and the opportunity was taken of adding a third clause which expressed a principle certainly of justice, possibly of law, namely, that, if the surety was compelled to repay, he should have the same remedies against his principal as the Government would have when the advance was due. He conceived that to be a just provision, and he thought every body would be satisfied to have it expressed in the Act, because, though there was a general principle of law to the same effect, there might be doubt whether it would apply to the very peculiar position in which the Government stood as owners of land-revenue.

He had only to add that although this was a Bill which affected, and must affect, existing contracts, yet we might feel quite assured that all loans that had been made had been advanced by the Government, and had been received by the borrower, upon the understanding that the remedies were such as were expressed in this Bill, and that, so far as they had been recovered, which has been done to a considerable extent, they had been recovered on those same principles.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill be published in the *Gazette of India* in English, and in the Gazettes of the Local Governments by which advances have been made under the Land Improvement Act, in English and in such other languages as the Local Governments direct.

The Motion was put and agreed to.

OUDH LAND-REVENUE BILL.

The Hon'ble MR. HOBHOUSE also moved that the Hon'ble Sir Alexander Arbuthnot and the Hon'ble the Mahárájá of Balrámpur be added to the Select Committee on the Bill to consolidate and define the law relating to the settlement and collection of Land-revenue in Oudh.

The Motion was put and agreed to.

CIVIL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE also moved that the Hon'ble Mr. Hope be added to the Select Committee on the Bill to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to amend the Land Improvement Act, 1871—The Hon'ble Sir Alexander Arbuthnot, the Hon'ble Messrs. Hope and Cockerell, and the Mover.

The Council adjourned to Thursday the 14th September 1876.

SIMLA;
The 7th September 1876.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla—12-9-76.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Government House on Thursday, the 14th September 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble T. C. Hope.

The Hon'ble F. R. Cockerell.

SINDH INCUMBERED ESTATES BILL.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill to relieve from incumbrances the estates of Jágírdárs and Zamíndárs in Sindh be taken into consideration.

He said that the Report of the Select Committee which he had the honour to present on the occasion of the last meeting of the Council, would speak for itself; but there were three or four matters upon which, perhaps, it was desirable for him to say a few words. In section 15 of the Bill the Committee had provided that when the Manager had determined the amount of the several debts, he should, if they could not be paid at once, rank them according to the order in which they should be paid, and fix the interest, if any, to be paid upon them, respectively, from the date of the final decision to the date of the payment and discharge. They had made that provision because there might possibly be some cases in which it might be proved to be necessary; at the same time, he trusted that the Bombay system which was adopted in other parts of the Presidency, of advancing the funds necessary for the liquidation of the debts, and afterwards recovering those funds from the pro-

ceeds of the estate, would be followed in Sindh. That system was better for the estate, because creditors would accept less in a lump sum down than if they were to be paid by a long series of instalments. It was also fairer to the creditors, as when their interest was, in many cases, cut down, they ought not, in addition, to be kept waiting for their money. And, finally, there could be no harm, and no risk to the Government from this system, as long as the liquidation-scheme had been carefully and properly considered.

Another point he would mention was that the Committee had struck out the old section 17, which gave power to reduce the amount of interest in all cases where it was found to be too high; but they had done this merely because the subject was rather a large one, and they thought that it would be better provided for in Rules than by the somewhat bald terms of the section as it stood. They had, therefore, inserted in section 30 of the Bill, as amended, a clause taken from section 19 of the Chutia Nágpur Act. This change was made merely for the reason which he had alleged, and not with the slightest intention of preventing the cutting down of the interest, as might, perhaps, be supposed by some persons, on account of the omission of the section.

Another point he would refer to was that in the new section 23 there was not the proviso which would be found in the old section 26, forbidding the sale of property under management except with the consent of the owner. No doubt there were cases in which the only way to effect a liquidation of the estate was by selling some portion of the property, and it was necessary in such cases that the Manager should have the power of effecting such sale, and should not be hampered by the prejudice and opposition of the owners of land themselves; but at the same time, he himself felt a great aversion to any such sales of land, and he only hoped that the Sindh officers would follow the example of those who had worked the previous Acts in Ahmedabad and Broach, and who had been able to bring about, without sales, the very favourable results which he had laid before the Council in April last, on the occasion of the discussion of the Chutia Nágpur Bill.

The fourth point which he would mention was that the Committee had made a separate chapter for appeals and revisions; the Bill now expressly gave an appeal against all the more important orders which the Act contained, and further provided a general power in the Commissioner to call for the proceedings in any case and to pass orders upon them. He trusted that those provi-

sions would be a sufficient guarantee to the public that the creditors would be fully and fairly and completely heard in all cases in which their interests were involved.

He would also notice one or two points which he had observed in some very intelligent criticisms to which the Bill had been subjected in certain quarters. One of those was to the effect that he had not mentioned, in his previous speech, that any measures had been taken to reform the Revenue administration to which he had in some measure attributed the misfortunes in which the Jágírdárs and Zamíndárs found themselves involved. He had not done so, because in Bombay, as he trusted in every part of India, to know of an evil was to Revenue officers synonymous with taking every possible measure to redress it. In this particular case, no sooner were the settlements found not to be working well than they were carefully revised, and he believed that no further difficulty had been found with regard to them up to the present time. Again, he was asked how it was possible to manage petty estates of Zamíndárs paying only Rs. 300 per annum, many of which were under cultivation by the owners themselves. With regard to that, in Bombay, the practice had been for the officers charged with the management to avail themselves very largely of the owners themselves. It was generally found that those men, when once relieved from the pressure of debts, and the terror of arrest and imprisonment which had hitherto followed them, were most willing to give every assistance in their power in the management of their own lands. The arrangement was an exceedingly economical one, as regarded the management, and an exceedingly beneficial one to the men themselves; for of course it was better to keep them employed in the management of their own lands with the view of ultimately clearing themselves, than to turn them on one side to lead an idle life. He had no doubt that this system which was adopted in Bombay would also be largely followed in Sindh, and with a view to facilitate that object a proviso had been put into section 8 of the Bill expressly to state—

"that nothing contained in this clause shall be deemed to preclude the Manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act, as may be agreed upon between the parties."

In conclusion, he had only to express his belief that this Bill, which embodied the working experience of some fourteen years in different parts of India, and also the legislative experience acquired by the framing of the four Acts already passed, would prove well suited to the purpose in view; and he

would also add his hope that the Jágírdárs and Zamíndárs brought under the Bill, would, by efficient management, be speedily restored to unencumbered estates, and that they would live long to enjoy them under the very salutary restrictions against getting themselves involved again, which the Bill provided in section 27.

The Motion was put and agreed to.

The Hon'ble Mr. Hope also moved that the Bill as amended be passed.

The Motion was put and agreed to.

BOMBAY MUNICIPAL DEBENTURES BILL.

The Hon'ble Mr. Hope moved that the Report of the Select Committee on the Bill to amend the law relating to the transfer of Bombay Municipal Debentures be taken into consideration. He said that he had explained on a previous occasion that the objects of this Bill were very simple, namely, to validate the transfers of debentures which had been made by simple endorsement instead of by deed duly stamped, to exempt from penalties such persons as had thus contravened the law, and to admit of transfers being made by simple endorsement in future.

The Committee had not made any alteration in the Bill so far, but had added a clause at the suggestion of the Municipal Commissioner of Bombay, and with the concurrence of the Bombay Government, enabling debentures to be consolidated, and also to be subdivided again, if necessary, and to be renewed when worn out. Thus a man who happened to hold fifty thousand rupees worth of debentures, all in separate notes of a thousand each, could get one debenture for the whole fifty, and so would not be obliged to endorse separately; and, again, if at some future time he wished to sell, he had only to take his note to the Municipal office, and get it divided into as many portions as he required. All those provisions existed at present with regard to Government Promissory Notes, and would, on the one hand, save a good deal of trouble, and on the other, improve, it was believed, the value of the security.

The Motion was put and agreed to.

The Hon'ble Mr. Hope then moved that the Bill as amended be passed.

The Motion was put and agreed to.

CIVIL PROCEDURE BILL.

The Hon'ble Mr. Hobhouse asked leave to postpone the presentation of the further Report of the Select Committee on the Bill to consolidate and amend the Laws relating to the Procedure of the Courts of Civil Judicature.

Leave was granted.

MADRAS HARBOUR RATES BILL.

The Hon'ble Sir Alexander Arbuthnot moved for leave to introduce a Bill to enhance the rate of dues leviable on vessels entering the Port of Madras. He said that he wished to introduce this Bill in connection with the works which were now in progress at Madras for the construction of a harbour for that Port. The Council were aware of the great and pressing want of a harbour on the Coromandel Coast and of the great loss of life and property which had too frequently occurred owing to that want. After very considerable delay, many reports, and numerous suggestions, Her Majesty's Government had adopted a design framed by Mr. Parkes, the eminent Civil Engineer, who constructed the harbour at Karáchi, and, last year, the works, according to that design, were commenced, and were now in progress at an estimated cost of £628,000. It was to supply the interest on this capital sum, and to provide for the working expenses, that it became necessary to increase the port-dues levied, under the existing law, on the shipping of Madras, and it was with that view that he asked for leave to introduce the Bill. Should the permission, which he sought, be granted, he would take occasion, when introducing the Bill, and explaining its provisions, to enter more fully into the details of the entire subject.

The Motion was put and agreed to.

STRAITS SETTLEMENTS EMIGRATION BILL.

The Hon'ble Mr. Hobhouse introduced the Bill to regulate the emigration of Native labourers from the Presidency of Fort St. George to the Straits Settlements, and moved that it be referred to a Select Committee with instructions to report in three months. He said—"The subject of emigration is one on which I have had occasion to address this Council so often that I feel almost ashamed to speak of it again. Nevertheless it is a subject which has many ramifications, in regard to which the different circumstances of different localities require different laws, and which therefore comes before this Council in different aspects. We have one law for emigration from India to British,

French, Dutch and Danish Settlements in the West Indies, in South America, and in the African seas. We have another law for emigration from Peninsular India to British Burma: another for emigration from Bengal to Assam, and again another for emigration from Madras to Ceylon. It happens therefore that those who are not constantly obliged to attend to these things find it difficult to keep in mind what are the peculiar features of each case to suit which our law should be moulded.

"Now the case of the Straits Settlements has some peculiar features of its own. The most important of them is that the practice of emigration thither from Madras is an old one, one which has sprung up spontaneously among the people, and extends back eighty years or more. This fact yields two results. First, there is a substantial Tamil Society in the country, and the Tamil emigrant finds himself not wholly a stranger in his new home. Secondly, since the practice of advancing money to assist emigration has grown up, a system of labour-contracts has grown up with it, which differs from the system generally prevailing under the General Emigration Act. Another feature is the distance between Madras and the Straits Settlements. That distance is short compared with the distance from Demerara or even from Mauritius; and the arrangements and precautions which are suitable to the longer passage are an useless encumbrance and expense when applied to the shorter one.

"In respect of the passage, the emigration to the Straits Settlements resembles that to British Burma, but it has these material differences; that in British Burma the emigrant's contract is made with the Government, whereas in the Straits Settlements it is made with a private employer; and the emigrant to the Straits Settlements leaves our dominions, whereas in British Burma he is still under our laws and authority Moreover the kind of labour required for British Burma is different and leads to a different kind of contract.

"In respect of the kind of labour required, the emigration to the Straits Settlements resembles that to Assam, where also it is the practice for the emigrant to contract with a private employer; but there is a different kind of passage, and also the important difference that the emigrant passes beyond the reach of our laws.

"In fact it will be found on comparison that of the various branches of the emigration which takes place from India there is not any which does not differ in material respects from the emigration to the Straits Settlements.

"Well, such being the state of things, it was discovered some five years ago that, owing to circumstances not observed at the time,—circumstances which I have recounted before and need not recount again,—the whole of the assisted emigration to the Straits Settlements was contrary to law, and that its promoters were subject to penalties. The Council may remember that consequent upon that discovery, in the year 1872 we passed a short Act to relieve the emigration from the ban under which it was placed, and to leave the matter to be dealt with after negotiation between the Colonial Government and ourselves. Legislation was found to be required on both sides, and there has been a considerable amount of discussion respecting the terms in which the laws should be framed.

"When I moved last year for leave to introduce this Bill, I stated that the Government of the Straits Settlements had framed an Ordinance satisfactory to the Government of India. There were however some alterations to be made in it regarding the right of emigrants to the price of a return-journey and regarding some other things, and a fresh Ordinance was passed in the month of February last. It is with reference to that Ordinance, whose operation is suspended for the present, that we have now to frame our law. I need not detain the Council by going into the several matters on which there have been differences of opinion. Several proposals have been made on our side in the interest of the emigrant, which it is our especial duty to protect. Some of those proposals have been embodied in the Ordinance, and some have not. It is sufficient to say now that matters have been put on such a footing by the Straits Settlements Legislature that there is no reason why we on our side should any longer delay to place the emigration on a permanent legal basis.

"In the first place the Ordinance provides that a Protector of Immigrants shall be appointed on the nomination of the Madras Government. Now that seems to me to be an alteration of great importance. What we want more than anything else is accurate and trustworthy information about the condition of our emigrants. In some instances we are able to get it, but in many we are not, or are not able to get it with regularity. If this proposal of the Straits Settlements enables us to get such information and reports as we from time to time desire, and I conceive it will enable us to do so, it is well worth our while to postpone the settlement of many details, even important details, until the working of the new machinery has placed us in a better position to understand the matter.

"In the second place the Ordinance has been so framed as to subject to penalties in the Straits Settlements any person who promotes emigration thither contrary to our laws. It has, therefore, in effect left it to us to say upon what terms emigration from hence shall be legal in the Straits Settlements.

"Now I said that it is worth while to postpone discussion on many details until our knowledge is more thorough. But there are certain palpable benefits which it is found possible and not difficult to secure for emigrants who go to other countries, and which we think ought to be secured for those who go to the Straits Settlements.

"One of these benefits is that the emigrant's maximum term of compulsory labour should be fixed by law. The Ordinance fixes no such term. In the countries to which the General Emigration Act applies, the term is generally five years. But the emigration to those places is much more expensive than that to the Straits Settlements; and we have reason to think that the contract wages given to emigrants in the Straits Settlements are, as compared with the market-price of their labour there, substantially lower than elsewhere, so as to leave a larger margin of profit to the employer. We are informed that the usual term which has hitherto been contracted for in the Straits Settlements is no more than two years. We may assume therefore that two years of contract labour have under existing conditions been found sufficiently remunerative to employers. The machinery of the new laws both here and in the Straits Settlements will impose some additional expense on the employers, and it may be right to fix for a maximum some term exceeding the present customary term. But it would not be right, when we are sending people to work under a stringent penal law, to omit all security that the term of their compulsory labour shall be a moderate one, or to fix a term much beyond that which suffices fairly to remunerate their employers. The Madras Government have advised that the maximum term shall be three years, and we have adopted that advice in our Bill

"Another benefit to the emigrant is that a minimum wage shall be fixed. This has been put at 12 cents a day for an able-bodied male adult, being the amount which we understand to be now customary in the two-year contracts.

"I need hardly say that the figures inserted in our Bill, whether as regards the maximum term of labour or the minimum of wage, will be altered in Committee, if on further information alteration appears to be desirable.

"Another point of importance is to take care that contracts made by emigrants shall be labour-contracts, a kind of contract on which it is possible to engraft equitable terms and adequate protection for them. A mere contract to pay money provides for nothing of that kind. If a Tamil peasant goes to Penang upon a simple contract to pay so many dollars to some person who has advanced, or who alleges that he has advanced, them on account of his emigration, he will have no money when he gets there, he will be helpless, he will be at the mercy of his creditor, and he may be pressed into a much more onerous labour-contract than is fair to him, or than he would have entered into at his own home. We are told that there is danger of this, and the Ordinance provides no security against it. No doubt the institution of a Protector of Immigrants will, if properly worked, do much to prevent hardships and oppression of all kinds. But there seems no reason why labour-contracts containing fair terms should not be made in every case in which a man is induced to leave his home at the instance and for the benefit of some other man who provides the expenses.

"To meet the objects I have stated, we propose to declare that contracts for the mere repayment of money advanced to procure emigration, and also contracts omitting the important particulars of a maximum term of labour and a minimum wage, shall be illegal according to our law. That declaration will, as I have explained, make them illegal according to Straits Settlements law.

"Now those are the special peculiarities of the Bill I am introducing. I need hardly explain the general machinery of emigration contained in it, which is of the usual kind, and is now very familiar to the Council. There is a system of recruiting, a written contract, an examination by Magistrate and Doctor, a registration, an embarkation under the auspices of the Protector of Emigrants. The only difference in these respects between this Bill and our General Emigration Law is that some observances and safeguards thought necessary for the general law have been omitted here. In this matter also we have been advised by the Government of Madras.

"I have only to add that as the special circumstances affecting emigration to the Straits Settlements apply only to emigration from Madras, it is proposed to repeal the Act we passed in 1872. The effect of that operation is that the Straits Settlements will, so far as regards the rest of India, be on the same footing with other places to which the General Emigration Act has not yet been extended by order of the Governor General in Council."

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be published in the *Gazette of India* in English, and in the *Fort St. George Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

INDIAN RAILWAY BILL.

Colonel the Hon'ble SIR ANDREW CLARKE introduced the Bill to consolidate and amend the law relating to Railways in India, and moved that it be referred to a Select Committee with instructions to report in five months. He said that the primary object of this Bill was to make it clear that certain sections of the Railway Act applied to lines under construction or not opened for public conveyance of passengers and goods. These sections dealt respectively with the following matters:—reports of accidents: power to make rules for working the line: carriage or delivery of dangerous goods: drunkenness or breach of duty on the part of Railway officers: acts endangering the safety of passengers: passengers entering carriages in motion or riding on the steps: unauthorized riding on engines or tenders or in luggage-vans: obstructing Railway officers: injuring carriages: trespass: cattle-trespass within railway fences: offences connected with gates.

Besides this, the Bill would consolidate and arrange in a compact and convenient form four out of the five Acts through which the Railway law of India was now scattered. The fifth (Act LII of 1860) would be dealt with by the Presidency Magistrates Bill, now before the Council.

It was thought unfair that Companies should be liable for loss or injury to luggage unless where it had actually been made over to the charge of a Railway officer. Section 5 of the Bill contained a provision to that effect.

The present Railway Act (XVIII of 1854) contained a section (10) copied from the English Carriers Act, which specified certain valuable articles for losing or injuring which Companies would not be liable except in case of special engagement. To this list the present Bill proposed to add certain other articles, such as cloths of which gold or silver formed part, opium, ivory, ebony, sandal-wood and musical instruments. This addition was suggested by the Schedule to Act No. III of 1865.

It had been found that coolies employed in loading and unloading goods at certain Railway stations were in the habit of receiving, and indeed exacting, bribes; and as they could not, strictly speaking, be deemed Railway servants

within the meaning of Act XXXI of 1867, the law as it stood was powerless to put a stop to these practices. The Bill accordingly in section 23 provided that not merely Railway officers, but every other person employed by or on behalf of a Railway Company to do any act upon a Railway should be deemed a "public servant" within the meaning of sections 161 to 165 of the Penal Code.

The only other change which the Bill proposed to make was to raise to some extent the fines for giving a false account of goods carried, or to be carried, on a Railway.

The Motion was put and agreed to.

Colonel the Hon'ble SIR ANDREW CLARKE also moved that the Bill be published in the *Gazette of India* in English, and in the Local Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to regulate the emigration of Native labourers from the Presidency of Fort St. George to the Straits Settlements:—The Hon'ble Sir A. J. Arbuthnot, Colonel the Hon'ble Sir Andrew Clarke, and the Hon'ble Messrs. Hope and Cockerell, and the Mover.

On the Bill to consolidate and amend the law relating to Railways in India:—The Hon'ble Mr. Hobhouse, the Hon'ble Sir W. Muir, and the Hon'ble Messrs. Bullen Smith and Cockerell, and the Mover.

The Council adjourned to Thursday, the 21st September 1876.

SIMLA;
The 14th September 1876.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla—21 9-76

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Government House on Thursday, the 21st September 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I. *presiding.*

His Excellency the Commander-in-Chief, K. C. B.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble T. C. Hope.

The Hon'ble F. R. Cockerell.

CIVIL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE presented the further Report of the Select Committee on the Bill to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature. He said:—"There is no motion on the list of business, and it is not strictly necessary to make one. But this is a bulky matter, as anybody can see who will cast his eye on the Bill that I have before me. It is full of details, which are as the stars of heaven for multitude, and by no means so brilliant or interesting. Most of those details concern the technical mechanism by which a suit is conducted from its beginning to its end; and those are matters upon which criticism and advice cannot be very usefully offered by anybody who has not undergone the labour of studying the Code as a whole, and with some professional knowledge to start with. Embedded in those details, and underlying them, are various principles of considerable importance—some of them of very great importance—and those are just the points upon which we may receive useful criticism and advice from persons who are unable or unwilling to undergo the labour of studying the Code as a whole. Now in such cases we generally find it a useful thing, on the presentation of a Report, to call attention to the

points of principle on which we propose alterations, although there may be no discussion on hand, and although we are asking the Council to take no step beyond suspending their judgment until after the publication of the Report of the Committee and of the new draft. Therefore I propose to call the attention of the Council to the main points in which the law will be altered, if the Council think fit to pass this Code into law in the shape in which the Committee have now prepared the draft. Some others of my hon'ble friends have also some information to impart on points which, owing to their greater experience, they can explain more accurately and clearly than I can; and in order to put myself and them in more strict order, I will, with His Excellency the President's permission, make a formal motion when I have finished what I have to say, to the effect that the Report be published as recommended by the Committee.

"I have before had occasion to observe that, constituted as our Legislature is, our proceedings in Committee often had more of the essentials of a public discussion than our proceedings at this table, and I never knew that to be the case more certainly than now.

"The Bill which we prepared last year was published in the month of March 1875.

"We asked the Local Governments to be good enough, each of them, to submit it to a few skilled officers. They have discharged that task with great judgment, and the result is that, besides the opinions given by the Local Governments themselves, we have a body of comment and criticism, I may say, upon almost every sentence of our Bill, proceeding from about fifty gentlemen well competent from their position and antecedents to give advice, and many of whom have brought great zeal, industry and acuteness to their work. That work is rather bulky. It consists of the two volumes which I hold in my hand, and which contain about 450 folio pages of close print. It has been carefully and methodically perused and digested by our Secretary, and by my hon'ble friend Mr. Cockerell, who have winnowed the chaff from the wheat; and it has been examined, I am sorry to say in a more fragmentary way, and mostly with reference to the more important parts of the Code, but still to a considerable extent, by myself. And I have no hesitation in saying that it contains as valuable a public discussion and criticism of our work as it is possible for a Legislature like ours to obtain on a subject of this kind—a subject of great magnitude, great intricacy, abounding with details, and requiring professional and practical knowledge at every turn.

"We have upon the face of our Report expressed our obligations to the gentlemen who have been good enough to favour us with papers, and we have endeavoured to indicate what seemed to us the most able and useful papers among the number. But there are many others that are able and useful, and I am not quite sure that we have been wise in making distinctions.

"I have only to add on this point that, as I anticipated when moving for the Committee, the number of small alterations consequent on the criticisms is something enormous. I cannot tell the Council how large it is, and indeed nobody can tell, excepting a person who will take the Bill of last year, which is labelled 'Bill No. III,' and the new draft, which is labelled 'Bill No. IV,' into his hands, and will compare them sentence by sentence. But the gentlemen who have been good enough to bestow pains on this matter will find that, in whatever shape the Code is passed, their work has passed very largely into the frame-work of the law.

"Now I proceed to mention what are the principal alterations that the Committee are proposing; and the Council will find that most of them—in fact nearly all of great importance—are connected with that critical part of the Code which regulates the execution of decrees; the execution of a decree being the *ultima ratio* by which the law enforces the rights of the creditor against the debtor. Now, it is very generally thought that our existing Code is too rigid and mechanical in its operation, and that it bears too hardly and incisively upon the debtor. By our Bill No. III we proposed certain relaxations of the Code in that respect, which I explained to the Council last year. The result of the comments we have received has been to induce us to go further in the same direction, and to propose some further relaxations and some further facilities for the debtor to discharge his obligations to the creditor, without being what is commonly called 'sold up.'

"The principal point to which I drew attention last year, a point mentioned both in our Report and in my speech to the Council, related to the sales of land in execution of decrees for money. This is indeed in my judgment by far the most important point of all the matters of debateable policy involved in the Code. Every Member of this Council must be familiar with the discussions which arise from time to time about the rapid transfer of land from the poor cultivator to the rich, or comparatively rich, lender of money. The discussion crops up in all directions. A few weeks ago I had occasion to mention the subject in connection with the law of pre-emption in Oudh. Mr. Hope mentioned it the other day in connection with the Jágírdárs of Sindh. Within the

last few years, it has twice been the subject of a general and formal enquiry by the Government of India. There is hardly any part of India in which the problem does not more or less exercise the mind of the Local Government and of its principal officers. Some of them think that India abounds with usurers, who lend their money chiefly with a view of getting the land of the debtor, each being a sort of Indian version of the

'Fœnerator Alphius
Jam jam futurus rusticus.'

"Others tell us of village Shylocks, each intent upon securing his pound of flesh, and with apparently no village Portias to counteract their machinations by quibbling away what is written down in the bond. No doubt there has been some exaggeration in those matters, but, all exaggeration apart, the problem is a serious one and requires some careful consideration.

"Now the rapid transfer of land, which creates such uneasiness, is a process which we may see to have gone on in all countries where wealth is increasing and the commercial spirit is advancing. And though it is always accompanied by some painful incidents, the process is a healthy and beneficial one enough, if it is spread over a length of time, if it advances only with advancing civilization, and is not accelerated by adventitious circumstances.

"The peculiarity of our case in India is this, that, with the British rule, we introduced two most powerful factors of civilization tending to promote the transfer of land to the moneyed classes. One of those factors is an equal and moderate assessment of revenue, which has given to the land a margin of value that it did not possess before, and has made it a covetable possession for the purpose of investing money. The other factor is a vigorous system of law-Courts, which gives to the creditor swift and certain means of enforcing his contracts, and of taking his debtor's land if he cannot pay. There is no doubt that those means have been very much increased since the Civil Procedure Code came into force, and it is a strong testimony to the efficacy of the Code as a whole, though in this particular instance it may have produced some disagreeable effects.

"The Code itself contains no check whatever upon the unreserved and unqualified sale of the land of the debtor who cannot pay. There is indeed one section—section 248 of the Code—which provides that, in certain circumstances, the execution of a decree may be handed over to the Collector. Whether it was intended to give the Collector any discretionary power in such cases may be doubted, but at all events if it was

intended, the intention is not clearly expressed, and the Courts have held that the Collector is only a ministerial officer for carrying into effect the decrees of the Court. The result is that sales have gone on in a rigid mechanical way, without even the check of an upset price, or of a power of adjourning the sale when the whole thing is an evident failure, and with the common result that the property is bought in by the judgment-creditor himself at a great undervalue.

"There are some parts of our dominions—the Panjáb, Oudh, and the Central Provinces—in which the Code has been introduced with a material modification upon this point, the modification being in the shape of a provision that, before a debtor's land can be sold, the consent of some high and responsible authority shall be required; so that there is a discretionary power given to the Administration to prevent such sales. And we are told that in those Provinces there has been a substantial retardation, and, in the opinion of I think I may say all officers, a beneficial retardation, of the process of transferring land from one hand to another. But elsewhere, where the Code has been introduced in its simplicity, the transfer of land has been going on at an accelerated pace, with the effect of creating a large dispossessed and discontented class.

"The effects of this system upon debtors have been very much intensified by certain arrangements which lower the price to be obtained at execution sales. I explained to the Council before that there are two rules which have a very prejudicial effect in that respect. One is the rule that nothing can be put up for sale excepting that vague thing, the 'right, title and interest' of the debtor in the land. Whether that right, title and interest be much, or little, or nothing at all, it is the only thing which can by law be sold. The other is the rule that the judgment-creditor, who is practically the vendor, shall keep the purchase-money in his pocket, although it may turn out that the right, title and interest which he has sold are nothing whatever, although he may have put up for sale the land of an entire stranger, and although the purchaser may have got nothing by his purchase except a lawsuit.

"I believe also that another blemish in these sales is that the property, however large, is always put up in a single lot.

"In our Report of last year we mentioned the effect of those rules, and the remedies which we proposed for bettering the condition of the debtor. Our remedies were, to allow a specific description of the interest to be sold, and

to require at least some attempt at a more specific description than the law now allows; to alter the rule as to the recovery of money when nothing whatever has been sold; to prevent the creditor from bidding at a sale except with the permission of the Court; and to provide that the Executive may make rules imposing conditions on sales. We contemplated that the rules made by the Executive would be of such a nature as this—to require the consent of some high and responsible authority, as is done in the Panjáb and in the other Provinces I have mentioned, to provide for an upset price, for sales in lots when desirable, for adjournment of sales, and such other safeguards as might be thought necessary to prevent the land from being sold for a mere song.

"Regarding the action of the Collector we said this:—

"'It has been held that the Collector is a mere ministerial officer under the corresponding section of the present Code, and that he has no discretion as to postponing sales, fixing an upset price, or any other matter affecting the substance of the sale. And it is suggested that the Collector ought to have discretion in such matters, or even some larger power to make arrangements for payment of the debt by some means short of an absolute sale of the land. The point is one on which we should be glad of opinions from those who have been led to study it. It will be remembered that, in section 272, we propose to give power to the Executive to make special rules on the subject of sales of land.'

"Respecting the incidents of sales and the risks incurred by purchasers we said:—

"'We shall be glad to know of those who are familiar with the subject whether the fact really is that property is apt to be sold at an undervalue in execution-sales, and if so, to what cause they impute it, what they think of the alterations now proposed, and whether any remedy has occurred to them by which more security can be given to purchasers with the view of obtaining better prices for land.'

"Those are the points on which we specifically asked for advice. Upon the latter point we find a large concurrence in our views, and I need only say here that we have gone somewhat further in requiring specific description of the property to be sold. We hope that the proposed alterations will lead to more care in putting up properties to sale than is now exercised by judgment-creditors. Any one who wishes to examine them more at large will find them in section 288 of Bill No. IV.

"Upon the more important question of controlling the execution of a decree for sale we have received a great deal of advice, and the result is that we propose to make some more specific alterations of the law than the mere investiture of the Executive with power to impose conditions on the sale of

land. I will just read to the Council some of the views which we have received upon this subject. The Lieutenant-Governor of Bengal, who has sent us three minutes, all of value, says upon this point:—

"'I am advised by many well-informed authorities that the immoveable property sold in execution of decrees often goes for prices much below the ordinary selling value, not only by reason of the uncertainty for which I have just proposed a remedy, but also by reason of the summary and obligatory character of the sale. Indeed it is notorious that the misfortune of a man whose property has thus to be sold, is much aggravated by the unduly low sum which it fetches. The unpopularity which must thus, as I believe unnecessarily, attach to the sale of such property in execution of decree, is manifest. I say unnecessarily, because if a good department of execution of decrees were to be established, it could take charge of such property, attaching it before sale; managing it for a time; thus practically ascertaining its value; fixing an upset price; and in the event of such price not being offered, retaining the land under management for the benefit of the judgment-creditor and judgment-debtor alike. The cost of such management would be recoverable from the property. If the property consisted of land paying revenue to Government, it might best be managed by the Collector of the district, under precept from the Civil Court.'

"Now it will be seen that what the Lieutenant-Governor recommends is the establishment of a department for the execution of decrees, and he has insisted upon that plan further in another minute in which he goes into the matter with a good deal of detail. It may be an excellent plan, and I do not say a single word against it, but it is rather outside the scope of our present operations. It is an administrative operation, and would require the consent of the Government of India after going through the ordeal of various executive departments, the head of one of which I see looking very hard at me across the table. At the same time it will be seen that we adopt in substance the proposal of Sir Richard Temple, only that, instead of a new department, we propose to use the existing machinery of the Collector.

"Mr. Bell, the Legal Remembrancer to the Government of Bengal, a gentleman of great experience, writes as follows on the subject of execution sales:—

"'With regard to the difficulties which decree holders experience in executing their decrees, I have nothing to add to the very full discussion which the subject has undergone in His Honour the Lieutenant-Governor's Minute of the 29th September. But there is another aspect of the question which should also be considered: I mean the grossly inadequate price at which the debtor's property is sold at these execution sales. More noble and ancient families have been ruined by these Civil Court sales than by any other cause. A case came before me the other day in which property, for which the judgment-creditor had himself previously offered Rs. 50,000, was purchased by the same judgment-creditor at an execution

sale for Rs. 6,800. I venture to say that hundreds and hundreds of similar cases happen every year in Bengal. The present Bill (section 288) attempts faintly to deal with the evil by providing that the judgment-creditor shall not bid for the property sold without the express sanction of the Court. But that is clearly a most inadequate remedy. In many cases, unless the judgment-creditor was permitted to bid, there would be no bidders at all. What is required is that there shall be some security that the property is sold at a fair price. There is only one way in which this can be done, and that is by allowing the judgment-debtor, in case the Court holding the sale considers the price offered inadequate, to have the estate valued by the Court, and made over at such valuation to the judgment-creditor in satisfaction of his debt. I am sure that no measure short of this will be able to remove this great blot on our judicial administration. The present system of selling landed property at these judicial sales is only another form of robbery sanctioned by law.'

"Now the Council will observe that Mr. Bell speaks in very strong terms of the inadequacy of the prices obtained at these execution sales. But having read every word that is said upon this subject in the volumes of correspondence before me, and every word said in the two inquiries which I mentioned as having been made by the Government of India, and having had the opportunity of speaking about it to many gentlemen in high judicial positions, I have only found one officer who expresses an opinion that adequate prices are obtained at execution sales. No doubt such may be the case in some portion of India, but that it is not the case over India generally is quite clear; and strong as Mr. Bell's language is, it is borne out by a cloud of other witnesses.

"We do not indeed provide in terms that the estate shall be forced upon the judgment-creditor at a valuation made by the Court, but it will be seen that we propose to give the Collector a very large discretion which may lead to such an arrangement, if found to be beneficial under the circumstances.

"The only other opinion I will quote upon this subject is that of the Government of Bombay. Last year that Government consulted the High Court of the Province as to the expediency of transferring execution sales to the hands of the Collector in a particular district. Addressing the High Court on the subject of section 248 of the Code, which I mentioned a little while ago, they spoke as follows:—

"'It cannot be concealed that much dissatisfaction is felt in many parts of the country at the system at present in vogue for the sale of revenue-paying land, either owing to the unfitness of the Court's officers to conduct sales, to the dislike of the people, other than professional money-lenders, to bid for land at such sales, or to other causes which it is needless to mention. It is generally believed that practically the working of the present system ends in lands being sold by the Court's officers for very much below their value, and to their being very frequently bought in by the judgment-creditor for comparatively small sums.

"'His Excellency in Council is disposed to think that some measure of the dissatisfaction might be removed if such sales were entrusted to the Collector and conducted by his department. He accordingly proposes to introduce this practice under the authority vested in Government by the section quoted above. He does not at present intend to make it universal, but to introduce it as an experimental measure in one district. He has accordingly issued instructions to the Collector of Kaira, who has offered to undertake the duty, that in future his department should conduct all such sales within his district.'

"To that the High Court replied, expressing some doubts as to the legality of the proceeding, and pointing out that, at all events, the provisions of the Code were totally inadequate for the purposes contemplated by the Government. It will be seen that our proposal is to give to the Executive the very powers which the Bombay Government desired to exercise in a particular instance.

"Now for our proposals, the principal of which will be found in sections 320, 321, 323 and 326 of Bill No. IV.

"It will save trouble to quote sections 320 and 321 in full. They run as follows:

"'320. The Local Government may, with the sanction of the Governor General in Council, declare by notification in the official Gazette that in any local area the execution of decrees in cases in which a Court has ordered any interest in immoveable property to be sold, shall be transferred to the Collector; and rescind or modify any such declaration. The Local Government may also from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same.

"'321. Whenever the execution of a decree has been so transferred, if the Collector has reason to believe that the judgment-debts of the judgment-debtor can be discharged without a sale of the whole of such interest, the Collector may (notwithstanding any order under section 303, but subject to such rules as may from time to time be made in this behalf by the Chief Controlling Revenue Authority) raise the amount necessary to discharge such debts with interest thereon according to the decree, or, if the decree makes no provision as to interest, then with interest (if any) as he thinks fit not exceeding the rate of six per cent. per annum,

'(a) by selling part of the judgment-debtor's interest in such property or in any other immoveable property:

'(b) by mortgaging the whole or any part of such interest:

'(c) by letting on farm, or managing by himself or another, the whole or any part of such interest for any term not exceeding twenty years from the date of the order of sale, or

'(d) partly by one of such modes and partly by another or others of them.

For the purpose of managing under this section the whole or any part of such interest, the Collector may exercise all the powers of its owner'

"The Council will see that by performing one or another of the operations authorized by section 321, or by combining any two or more of them, the Collector will have an almost absolute discretion as to the mode of raising money out of the property for a term of twenty years; and if it really is the case that the debtor is a solvent man, provided only that the best is made of his property, there will be an opportunity of making the best of it, and he will eventually pay his debt and get his land back. If on the other hand the term of twenty years will not suffice for such a process, the poor man must yield to his fate and be sold up at last, and that we have provided in section 323. All we can do consistently with the principle that a man who has property shall pay his debts is to give him the chance of recovery, and to prevent the destruction of his property through ignorance, accident, hurry or extreme pressure.

"In furtherance of the same object, we have made some minor provisions applying to the Courts as well as to the Collectors. By section 291 we have provided for the power of adjourning execution sales. In section 292 we have provided that no officer having any duty to perform in connection with sales shall acquire any interest in the property sold; and by section 303 we have provided that sales of immoveable property shall only be ordered by a Court of the rank of a District Court.

"Section 326 requires a little more explanation. In that section we propose to alter the terms of Bill No. III, which gave to the Executive power to impose conditions upon the sale of land. Now of course a general power of imposing conditions, or a power of discretionary consent, may be so handled as to operate by way of complete prohibition in particular cases. But there are cases, especially in the more unsettled and backward parts of the country, in which it is better to give the Executive power to prohibit in direct terms the sale of particular interests in land, instead of doing it by some cumbrous and circuitous process.

"I will illustrate my meaning by reference to what is now going on in the Central Provinces. In that part of the country, the interests of jágírdárs, and those of occupying tenants, are in a state of very considerable obscurity. Their nature, and particularly the transferable quality of the property, will not be ascertained even approximately until the settlement of the country

has been entirely completed, probably not for many years to come. At the same time, although the interests are of an obscure legal character, the men are in possession, and are actually cultivating the land and living out of it.

"Here then is a possession of great value to its possessor, which is yet of so speculative a character, and the power to transfer which is so uncertain, that the sale of it rises very little above the level of a gambling transaction, that nobody will purchase it except the man who has got a decree to satisfy out of it, and he will only purchase it at a price trifling as compared with its value to the possessor. Yet it is under these circumstances that the Civil Courts have, in carrying out the letter of the law, put up for sale under the general expression of the debtor's 'right, title and interest', land in which the debtor has no interest except the vague one that I have just described. The Executive on their part have interposed difficulties by refusing consent to the sales. Now it does not place the Government in a very seemly position, if its officers in their judicial capacity put up something that professes to be of value for sale, and the same officers, or similar ones in their executive capacity, prohibit the sale because there is nothing of a marketable nature belonging to the debtor. It is still worse, when the property has been actually knocked down to a purchaser who pays his money for it, and then the Government officers have to contend that the interest was not transferable, that the purchaser had got nothing, and that he must lose both his purchase-money and what he fancied he had bought. It is impossible that people should believe that good faith has been kept with them under such circumstances. In cases of that kind, it is surely much better to give the Executive direct power of prohibiting the sale of particular classes of interests in some way which will be directly binding upon Courts of justice. That is the reason why we propose to empower the Executive to make rules prohibiting the sale of classes of interests in these terms:

"'326. The Local Government may from time to time, with the sanction of the Governor General in Council, make special rules for any local area imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, or prohibiting such sales—

'(a) where such interests are so uncertain or undetermined as in the opinion of the Local Government to make it impossible to fix their value:

'(b) where for reasons of State the Local Government thinks that such class of interests should not be compulsorily transferable.'

* * * * * * * * *

"These provisions relating to execution sales constitute the principal alteration that we propose in the Code, and our object has been to

alleviate the harshness and rigidity of the law, to diminish the number of forced sales, and to get for the owner of the land something like an adequate value for it, at the same time keeping clearly in mind the important principle—one of the most important objects of all civilized society—that a man should perform his contracts and pay his debts to the best of his ability.

"Another matter to which we called special attention in our Report last year is one which is considered to be of great importance by many Judicial and Executive authorities, and that is the practice of treating decrees as permanent investments of money. I mentioned to the Council before the remedies by which we proposed to abate that practice, which is considered to have a very injurious effect. I have only now to say that our proposals have met with almost universal approval, and that we have in the present draft somewhat strengthened the provisions which were made before. What we have further done in that respect is as follows.

"In section 209 we have adopted the plan already adopted by the High Court of Calcutta and the Chief Court of the Panjáb, namely, to provide that decrees shall not carry more than 6 per cent. interest. That plan has been in operation in those two parts of the country for some two or three years, and is believed to work satisfactorily.

"In section 232 we have provided that before a decree which has been transferred from hand to hand can be executed, notices shall be given to the transferor and the judgment-debtor, that the Court may hear if they have anything to say against that decree being carried into execution; and in section 235 it is provided that applications for the execution of decrees shall be verified, and that such applications shall give the history of all previous applications for the same purpose.

"Another subject of importance connected with the execution of decrees is that of insolvency. I explained to the Council before how we proposed to enlarge the present very rudimentary law upon the subject by providing a law somewhat less rudimentary, but still falling short of a complete and full insolvency law for the mufassal, which we are informed that the judicial machinery of the mufassal is not strong enough to work. What we proposed in that respect has been received with very general acquiescence, although we have received some contradictory opinions on the subject. One gentleman tells us that we ought to enact a complete and full insolvency law for the mufassal; another that the sections we have inserted into the Bill are such

as the mufassal Courts are not now strong enough to work; another says that the provisions are too cumbersome; and another that they are too meagre. On the whole, we have thought it best to leave this part of the Bill substantially unaltered.

"There are two other subjects still connected with the execution of decrees, each of considerable importance. One of those subjects relates to the things that may be taken in execution of a decree; and the other, to the priority of one decree-holder over another.

"In the Code there is contained no express exemption of the things that may be taken in execution. It is true that in those seldom-used sections which do duty for an insolvency law, it is provided that the insolvent may retain his wearing apparel and necessary implements of trade. But in section 205 of the Code, which relates to execution sales, it is said that all the property of the judgment-debtor, without any exception whatever, may be attached and sold. That extreme generality has been somewhat restricted by judicial decisions, and in our Bill No. III we followed those decisions, and made it part of the express written law that the exemptions in question should be allowed; and we also added that the salary of a Government servant should be exempted from attachment. Whether the salary of a Government servant can be legally attached at the present moment appears to be a matter of some doubt; the prevailing opinion is that it can be, and it is not infrequent in practice to have the salary attached by the creditor while still in the hands of Government. Our proposal to exempt it has met with a various reception—*laudatur ab his, culpatur ab illis.* We have adhered to the principle that public policy requires a Government servant to receive that amount of salary which is thought fit for his office. When he has got it, it is his; he must spend it as his affairs require; and we have no more concern with the amount that he pays to his creditors, at least as long as he keeps himself free from scandals and in a position to perform his duties, than we have with the amount he may spend upon his wife, his servants, his charities, or his amusements. Our business is to see that the judgment-creditor shall not intercept the money that is coming to the Government servant, and cut off those supplies which are necessary to enable him to perform his duties. We have therefore maintained that principle, and have extended it to Railway servants who, in this country at least, stand very much in the position of Government servants.

"If the Council will look at section 266 of Bill No. IV, they will find a list of the articles that we propose to exempt from attachment. Under head (*b*) we exempt tools of artisans, implements of husbandry, and cattle kept *bonâ fide* for agricultural purposes. Those articles were exempted in accordance with a great number of opinions received from mufassal officers, representing the hardship and impolicy of bringing people to total ruin by attaching such property; and we have added head (*j*), which exempts the wages of labourers and domestic servants The principle is that it is against public policy to make a man compulsorily idle either by taking away from him those tools which are necessary to enable him to earn his living, or by anticipating the wages of his daily labour, and so destroying all motive for self-exertion.

"The next topic is the priority of decrees *inter se*. That is at present regulated by section 270 of the Code, which provides that the person who first attaches property shall be the first to be paid out of it, even as against another creditor who has obtained a prior decree. Now there is no principle of justice whatever in that rule. Possibly the Code is framed upon the analogy of attachments of another kind, in which, when it happens that there are more suitors than one, it is allowable that a prior attachment should prevail. If so, the analogy hardly applies to objects that are inanimate and capable of division. In fact all rules on this subject must be more or less arbitrary and artificial, and we have got to find out the rule that is most convenient.

"Now the present rule leads to some unseemly scrambles for priority, so that it may become a matter of accident or of favour whether *A* or *B* or any other letter of the alphabet should be the lucky person to get paid in full to the detriment of other creditors. The Judge of Kaira speaks on this point as follows:

"'The provision that the holder of the decree on whose application the property sold was first attached, shall be entitled to be first paid out of the assets realized by the sale, does not appear to be quite an equitable one, and also gives rise to several questions which cannot be satisfactorily settled. It often happens that a certain decree-holder presents his application first for the attachment of a certain property, and another decree-holder presents an application for the attachment of the same property some days subsequently; but owing to some unavoidable accident the ministerial officers of the Court carry out the attachment under the second application first, and then attach the same property a day or two subsequently under the first application. In such a case, it is quite unjust that the person who presented his application

subsequently should have precedence over the first applicant in the matter of the appropriation of the assets. Again, when several decree-holders have presented applications for the attachment of the same property on the same day, and attachments have been made thereunder simultaneously, it is most difficult to determine how the assets should be divided.'

"From Sindh we hear somewhat the same story. The Judicial Commissioner tells us—

"'If several applications are presented simultaneously, the applicants might be satisfied rateably. In the Small Cause Court at Karáchi there is sometimes a rush of, say, twenty decree-holders, each anxious to be the first to attach. All applications put in at the opening of the Court might be held to be simultaneous.'

"That which goes on at the extreme western point of our dominions is not due to the longitude, for we find just the same state of things in British Burma, the extreme eastern point of our dominions. Mr. DeWet, our Government Advocate there, says:—

"'Provision should, I think, here be made for a case that is very common anyhow in Rangoon, where several persons attach property of the same judgment-debtor on the same day, and where the several warrants are handed to the officer of the Court at the same time. Which of these is to be deemed the first attaching creditor? The practice here has usually been to divide the proceeds of sale between them all rateably, but for this there seems to be no authority.'

"Now the Council will see that the recommendations which these gentlemen make are that when attachments are simultaneous there shall be a rateable division. We think that the principle of rateable division may be carried a little further; in fact as far as is convenient. We see no reason why there should not be a rateable division among all the judgment-creditors up to the point when it becomes inconvenient to delay dealing with the assets. Therefore it is provided, in section 295, that the attached property shall be divided rateably among all persons who apply for execution of money decrees against the same judgment-debtor prior to the realization of the assets.

"Another matter also connected with the execution of decrees is the imprisonment of debtors.

"There are many gentlemen, with whom I believe that my hon'ble friend Mr. Hope sympathises, who would have us abolish the remedy of imprisonment altogether. We do not see our way to that, but we propose to shorten the terms of imprisonment materially. At present the terms are limited by section 278 of the Code, which provides that the maximum term of imprison-

ment for any amount of debt shall be two years; if the debt is R. 500, six months; and if R. 50, three months. We propose to shorten those terms by providing that the maximum term should be six months, and if the debt does not exceed R. 50, the term of imprisonment shall not exceed six weeks.

"There are some matters in our Report which I will pass over with the briefest possible indication. We propose to reserve for the District Courts certain processes involving much discretion and responsibility. We also propose to give to the District Judges and to the High Court a certain control over the Small Cause Courts. These are points on which I have no personal knowledge, and which I have not found discussed in these papers. My friend Mr. Cockerell, who has experience of them, will be able to tell the Council more clearly than I can what is the precise practical effect of our proposals. But with regard to Small Cause Courts I may say that, ever since I have been in India, I have heard from various quarters that some power of supervision over their decrees is needed.

"In Chapter XVI of our Bill No. IV we have provided for the use of affidavits, an instrument at present unknown in the mufassal. It is however a very useful mode of taking evidence in all uncontested cases, and in applications which are of an urgent and provisional character. Nor do I believe that when sifted by cross-examination, as it is always liable to be here, affidavit evidence is more likely to mislead than oral evidence. In point of fact, one who cross-examines on affidavits has a considerable advantage in that his enemy has written a book, and a book which he has had time to study before he comes to cross-examine. Doubtless the use of a new instrument will require some care and circumspection, and it will also probably require some directions from the High Court to the subordinate Courts, for which we have provided; but with that precaution I see no reason why the alteration should not be productive of considerable advantage.

"While on the subject of evidence, I will call attention to an alteration made by section 184. We provide there that the Local Government may, in cases in which an appeal is allowed, permit the evidence of witnesses in any Court or class of Courts to be taken down by the Judge in his own hand in English. That is an innovation which in cases actually appealed would be attended with great advantage,—if it could be done consistently with the interests of justice in other respects,—because the Appellate Judge would then have the evidence in the same form before him as the Judge in the Court below. I need hardly dilate on the advantage of introducing the English language wherever

we can consistently with more important public interests, and I have no doubt that the Local Governments will take very good care that the course of justice is not obstructed by any order upon this subject. The Secretary (Mr. Stokes) reminds me that not only will the mind of the Appellate Judge be left freer to work when he is provided with the same materials as the Judge below, but that a great deal of expense will be saved in translations for the Appellate Courts if the original proceedings are taken in English.

"In section 433 we have attempted to deal with the rather delicate subject of a foreign potentate suing in our Courts. In that term I mean to include the Native Chiefs of India who are our feudataries. With regard to them the question is apt to arise much more frequently than with regard to those potentates who are foreign to all intents and purposes. The matter is one of some difficulty, and the difficulty has been recently illustrated by the case of the Rájá of Nahan, who keeps a shop in Ambála and was sued there by his own agent. We have had the advantage of seeing the principles applicable to this case discussed in a very clear and instructive judgment by the Chief Court of Lahore, who disallowed the suit. What we think is that if a foreign Chief become a suitor or a trader or a landholder in our territories, he may fairly be subjected to the incidents of the position he has chosen to assume. But in order to protect the dignity of such personages, and to avoid complications which are sometimes very awkward, we have thought it better to provide that in such cases suits shall not be instituted, nor decrees executed, without the consent of the Government. Those provisions we have embodied in section 433 of Bill No. IV.

"The last point I think it necessary to trouble the Council with—and they will be very glad to hear that it is the last—is the subject of appeals, not the vexed subject of second appeals upon which we have had so much discussion, because the proposals of the Bengal Government to alter the structure of the Appellate Courts have not yet been determined upon. But the law with respect to appeals where the Appellate Court consists of a plurality of Judges is not in a satisfactory state. According to section 332 of the Code, which applied to the Sadr Court, when an Appellate Court of two Judges differs upon a question of fact, and one of the Judges agrees with the Court below, the judgment of the Court below is to stand. When they differ on a point of law, the point is to be re-argued before another Judge or other Judges, and is to be decided according to the opinion of the majority of the whole of the Judges who have heard the point argued. By the charters of the High Courts, if a Division Court of two or more Judges is equally divided in opinion, the opinion of the senior Judge is

to prevail. Now, in that clause of the charter, original business and appellate business were lumped together, and though the rule is a very good rule in respect to original business, it is not satisfactory as applied to appellate business. The result of it is that the plaintiff may have a great preponderance of judicial opinion in his favour, and yet a decree be given for the defendant. It may happen that a man has obtained a decree in the Court below, or in two Courts below, and that half the Appellate Court is in favour of his retaining that decree, but because a single Judge, being the other half of the Appellate Court, thinks otherwise, then the decree goes for the defendant. We had to consider this question very carefully last year in connection with the Burma Courts Act, because the principal Court of appeal in Burma consists of no more than two Judges, and the principle we applied there was that which prevails in England, and which seems to me to be the most reasonable of all principles; that if there is no majority of the Appellate Court which can agree to alter, and how to alter, the decree of the Court below, that decree shall remain unaltered. I must confess that in our Bill No. III we left that matter in a rather unsatisfactory position, for we copied too faithfully both the Code and the charters, and the result was that we had introduced two conflicting principles. However we found out our error, and we have now adopted the principle which will be found embodied in section 575 of Bill No. IV.

"I will now conclude with the *pro formâ* motion that the further Report of the Select Committee, together with the Bill as settled by them, be published in the *Gazette of India* in English, and in the local Gazettes in English and such other languages as the Local Governments think fit".

The Hon'ble MR. COCKERELL said that in the remarks which he had to make upon some of the provisions of the amended Bill, he would endeavour as much as possible to avoid going over any portion of the ground which had been already traversed by his hon'ble and learned friend (Mr. Hobhouse) in his vigorous and lucid exposition of the leading features of that measure.

He desired to draw attention to certain important alterations of detail which had not been noticed, or at least dwelt upon, in the speech of the learned Member who had charge of the Bill, and which, his (MR. COCKERELL'S) personal experience led him to think, were calculated to improve very materially the existing provisions of the law on this subject.

The Report of a Select Committee upon any Bill ordinarily contained little more than a concise statement of the several amendments proposed, and in a report upon a measure of this magnitude any explanation of the grounds upon which the suggested alterations were based must necessarily be exceedingly meagre. The main object therefore of the present discussion of the subject of a report which was not intended to be received as a final settlement of the matter of which it treated, was to supplement its deficiencies in the way of explanation of the considerations upon which the proposed alterations of the law rested, and to draw to them as much public attention and criticism as was possible, whilst there remained time to utilize such criticism ere the measure was finally matured and passed into law.

He thought that it would be convenient to notice the alterations to which he had referred in the order in which they stood in the Bill as amended.

One of the most important perhaps of these was in regard to the status of the Courts of Small Causes. By section 2 these Courts were declared to be subordinate to the District Courts, and the precise effect of this declaration would be seen by a reference to sections 25 and 622 by which power was given to the High Court and the District Court, (1) to transfer any case from one subordinate Court to another, and (2) to call up from a subordinate Court any case in which no appeal would lie and to set aside any order or decision passed therein contrary to law.

Under the existing law the Courts of Small Causes were wholly independent of the District Courts, and controlled by the High Courts to only a very limited extent. The Act from which they derived their constitution empowered the High Courts to frame and issue rules for regulating their practice and certain other subordinate matters connected with their working, and it enjoined upon them obedience to the call of the Local Government and the High Court for periodical returns and statements of business performed by them, but beyond this it may be said to have practically placed them under no control. The High Courts could under section 13 of their Letters Patent call up from Courts of Small Causes, as Courts subject to their general superintendence, any case and try such case under their extraordinary original jurisdiction—an obviously inconvenient remedy—but they could do nothing under the power, which they had under their Charter, of transferring cases from one Court to another subject to their *appellate* jurisdiction, for that power could not be applied in the case of Small Cause Courts from whose decisions there was no appeal.

It had always seemed to him (MR. COCKERELL) that this position of the Mufassal Small Cause Courts was of a singularly anomalous character. They were placed side by side in almost every district with the Principal Civil Court to which all other Courts of every grade were subordinate, and yet this Court of general control had no power of interfering with them in any way.

The Judges who presided over these Small Cause Courts were for the most part selected from the higher grades of Subordinate Judges who had always been subject to the control of the District Judge, and the class of business performed by the Small Cause Courts was distinctly less important than that discharged by other Courts subordinate to the District Court.

What then he would ask was the reason for according this exceptional status to Judges of Small Cause Courts?

That it led to much abuse, he could not doubt; he had been frequently told of the inconvenience caused to suitors, and the irregularities in the practice of these Courts which arose out of this state of things and for which, it was complained, there was no local means of redress; and indeed he did not see what other result could be expected.

The Small Cause Courts had now been in existence for about fifteen years, and he believed that they had survived much of the unpopularity which undoubtedly at one time attached to them; but this practical independence of the chief local Civil Court had always been, and was still, regarded as a blot upon the system, and he was confident that its removal would be considered as not the least of the improvements projected by the amended Bill.

He would have been at a loss to conjecture why this want of local controlling power had been allowed in the original enactment for the establishment of these Courts but for the provision which it contained for the creation of principal Courts of Small Causes. For although these principal Courts were invested with no special power of control over the other Courts, yet it had been intended that Barristers should be appointed Judges thereof, and, in fact, at the time of the first establishment of these Courts, Barristers were in some cases so appointed.

Now although the present age was developing a levelling up tendency, and there was consequently no saying what the audacity of a future legislature might lead it to attempt, yet in 1860, when these Courts were first created, no person would have had the temerity to propose that a Court presided over

by a Barrister should in any way be placed in subordination to one of which the Judge was a member of the Civil Service! The Barrister element had, however, disappeared from the Small Cause Court Benches, and the class of Judges by which it had been replaced would have no reasonable ground for considering their personal dignity injured by being made subject to the control of the District Judge.

The alteration of the law contemplated by section 28 of the Bill was, he apprehended, one that would be deemed of especial importance to the interests of a large section of the community in the province to which he had the honour to belong. The Council were aware that in that quarter, especially in some of the Central and Eastern Districts, serious complications had from time to time arisen in regard to the relations between the landlord and tenant classes. Those complications had their origin in the special legislation of 1859 for the adjustment of the rent of land in the Bengal Presidency. Prior to the enactment of Act X of that year the landlords exercised large coercive powers which in effect compelled the tenants to pay in some form or another almost any amount that the landlord found it in his interest to demand—one practical result of the enactment of Act X of 1859 was the withdrawal of this power.

Now he (MR. COCKERELL) did not mean to say that this power should not have been disturbed, for it was a very arbitrary and unjust power which virtually placed the tenant class at the mercy of the landlord, but the law should certainly have compensated the landlord by affording him an effective remedy for the enforcement of his just rights, and this no doubt the framers of Act X had essayed to do by the provisions for enhancement of rent under certain conditions. Those provisions, however, had confessedly failed to effect their object, now that the tenant class had learned their exact legal status and the power which they could exercise by combination in resisting the landlord's attempts by process of law to exact an enhancement of rent. As the law stood, the landlord could only sue his tenants severally, and by virtue of their combination the pecuniary means of each one for resisting the claim to the last and carrying the case up to the highest Court of appeal were not wanting. Where this kind of combination existed even the wealthiest landlords shrunk before the ordeal of waging single-handed such an uneven contest with their tenantry in large estates in which the claim to receive enhanced rents might apply to more than a thousand persons. Sooner than embark in such costly litigation the landlords would endeavour by other means to gain their end, and these attempts

led to a state of bitter feeling between the classes which threatened serious breaches of the peace, and possibly open riots at any moment.

To meet this state of things a special Act was passed by the Bengal Council, and had quite recently, he believed, received the assent of His Excellency the President. By that Act, amongst other things, power was given to the landlord to proceed against the tenants of a whole estate for the enhancement of their rent in a single suit.

The Council would observe that a corresponding power was given by the Amended Bill (section 28) which provided for the joining of all persons

"as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative in respect of the same cause of action."

This provision would have a substantial advantage over that of the special Act referred to, inasmuch as, whilst the latter could be carried into operation only after the fulfilment of certain material conditions involving loss of time and expense, the former could be acted upon by every landlord who claimed to enhance the rents of his tenants collectively to the same extent and upon grounds common to all of them.

In section 58 of the Bill would be found an entirely new provision by which a plaintiff was required to present copies, on plain paper, of his plaint equivalent in number to the persons sued by him collectively for the purpose of being served upon the defendants together with the summons; and to meet cases in which by reason of the extraordinary length of the plaint itself, or the large number of the copies required, this obligation might be thought to press too hardly upon the plaintiff, power was given to the Court to allow the presentation of concise statements of the substance of the plaint to be served with the summons as an alternative measure.

Owing to the want of some kind of notice to the defendant as to the nature of the claim against him, great delay was often occasioned in the first hearing of the suit. It sometimes happened that the defendant knew all about the suit which was being brought against him, and the mere service of summons was sufficient to enable him to enter upon his defence, but in many cases the defendant either had, or affected to have, no such knowledge, and his first step on receiving the summons was to apply to the Court for a copy of the plaint and ask for an adjournment of the hearing to enable him to prepare his defence. Now by the provision just referred to, much delay would in such cases be avoided; moreover it seemed a more equitable course to throw the

burden of the first cost of the supply of the copy of the plaint upon the plaintiff, who had to establish his right to involve the defendant in the contemplated litigation, rather than upon the defendant, who, until some sort of *primâ facie* case was made out against him, must be regarded as in the right and entitled to the protection of the law.

Under the English law a somewhat similar practice prevailed, the nature and purport of the claim and a summary of the circumstances under which it was made being endorsed on the summons itself; that procedure was well suited to Courts where the summons was prepared by the legal agents of the parties to the suits, but would not apply to the Mufassal Courts in this country in which all forms of process were drawn up by the ministerial officers of the Courts.

There might be some difficulty in the working of this new provision, if the alternative of concise statements had to be largely resorted to, by reason of the responsibility thrown upon the officers of the Courts in regard to the correspondence of the statements with the subject-matter of the plaints, but it was to be expected that in the large majority of cases the power of substituting statements for copies of the plaint would not have to be exercised.

Sections 79 to 81 of the Bill were designed to effect a material alteration of the law in respect of service of the summons; and when it was considered that a very large proportion of the suits instituted in various parts of this Empire were decided *ex parte* by reason of default of appearance on the part of the defendant, the importance of this part of the Court's procedure could hardly be exaggerated.

He would first explain the mode of procedure at present adopted as contained in sections 54 and 55 of Act VIII of 1859, and the rulings of the High Courts upon this subject:

"In all cases where the summons is served on the defendant personally or any agent or other person on his behalf, the serving officer shall require the signature of the person on whom the service may be made, to an acknowledgment of service, to be endorsed on the original summons, or on a copy thereof under the seal of the Court. If such person refuse to sign the acknowledgment, the service of the summons shall nevertheless be held sufficient if it be otherwise proved to the satisfaction of the Court.

"When the defendant cannot be found, and there is no agent empowered to accept the service, nor any other person on whom the service can be made, the serving officer shall fix the

copy of the summons on the outer door of the house in which the defendant is dwelling."
* * * *

Now in regard to this last provision it would be observed that the law contained no declaration as to the effect of this fixing of the summons upon the outer door of the assumed residence of the person summoned.

Most of the High Courts had supplied this omission by ruling that the affixing process above mentioned constituted valid service Here then were two recognized modes of personal service: (1) the actual written acknowledgment of the person served, or other proof of his having been served in the absence of such written acknowledgment, and (2) the posting of the process on the dwelling of the person summoned when the latter or any other person capable of acting on his behalf in such matter could not be found by the server.

In the previously published draft of the Bill to amend the law relating to Civil Procedure, those provisions of the law as supplemented by the rulings of the High Courts were retained, and it was further provided that the mere endorsement on the summons by the serving officer that it had been served in accordance with either of these rules should be taken as *proof of due service.* Against this mode of treating this very important subject strong protests were made by a Judge of the Madras Presidency, and the writer of an article in one of the leading Bombay Journals. Looking to the severe penalty attaching to default of appearance on the part of a defendant when the due service of the summons upon him had been proved, and the consequent necessity of obtaining, as far as may be practicable, positive assurance that the defendant had really obtained timely notice of the action against him, the obvious injustice of reckoning as due service the spontaneous adoption by the process-server of a mode of procedure which was only allowed to constitute service, when specially ordered by the Court in the contingency of the latter being satisfied that the defendant was keeping out of the way to avoid service, was strongly insisted on.

The Madras Judge (Mr. Nelson) writing upon the existing Civil Procedure Code said in reference to this subject:

"Of all the enactments in the Code contained, perhaps it is the early part of this section (55) that is most frequently abused. Nothing in the world is easier than to fix a copy of a summons on the outer door of a man's house during his temporary absence from home, and process-servers are never over-diligent to find a man who does not happen to be sitting on the threshold of his house when they call. Again nothing can be more difficult for an ordinary

native to prove them that the process-server did not on a certain day fix a copy under this section, when a bribed process-server states that he did fix one, and dishonest suitors of course take advantage of every opportunity that offers when detection of their fraud is impossible or very difficult."

And the Bombay Journal wound up a well-maintained exposition of the unsoundness of the existing law with the following remarks :—

"Our contention is that personal service should not be dispensed with except under a special order of the Court. And we trust most sincerely that the Select Committee will pause before they finally give legislative force to a practice which is inconsistent with the other provisions of the Code, which damages the interest of defendants, which encourages negligence on the part of process-servers, and which opens a wide door to fraud."

The Committee had very carefully weighed these objections and had come to the conclusion that the principle of non-dispensation with personal service was the correct one; they further considered that the only satisfactory proof of personal service consisted in the production of the written acknowledgment of the person summoned, or some capable person acting on his behalf. It had therefore been provided in the Bill as now amended that where the process-server was unable from any cause to produce this written acknowledgment, he must make a return of non-service, and the Court should then, after examining him on oath touching the circumstances of such non-service, make such order in regard to substituted service as it might think fit.

The power heretofore vested in the Courts of ordering a general attachment of property had been omitted from the Bill as now amended. That power was conferred by Act XXIII of 1861 (section 13) in respect of moveable property found within the jurisdiction of the Court making the order of attachment in execution of money decrees where the amount did not exceed one thousand rupees, and by Act VIII of 1859 (section 214) in respect of moveable property, wherever it might be found, in execution of all other decrees. In England also the Courts were by law invested with a similar power. Nevertheless it was thought that this power should not be maintained, as being unsuited to the circumstances of this country. The existence of such a power afforded facilities for all kinds of oppression. An unscrupulous decree-holder armed with a warrant for the general attachment of his debtor's property, used it as a sort of roving commission to plunder his enemies by pouncing upon their property on the plea that, although in their possession, it actually belonged to his judgment-debtor.

In anticipation of possible or probable abuse of this authority, the existing law provided (Act VIII of 1859, section 218) that the Court might, previously to granting a warrant for the general attachment of property, require security from the decree-holder to such amount as should be deemed adequate in the way of compensation for any possible injury resulting to any person other than the judgment-debtor through the execution of the warrant. Now as it was obviously an impracticable task to forecast the amount of possible injury to individuals from an improper exercise of a general power of attachment of property, it followed that the above provision must prove a dead letter and could afford no adequate protection to the public against the misuse of this large legal power.

Moreover the holder of a warrant of general attachment would always be able to bring a cloud of witnesses to establish the equity of his proceedings under it, and it would in most cases be a difficult matter for the Court to come to the conclusion that the warrant had been deliberately misused and maliciously executed for the purpose of causing injury or annoyance to other persons than the judgment-debtor, and consequently the risk of an action for damages being successfully prosecuted was regarded as so remote that it had no practical deterring effect.

On the other hand, the provisions of the Bill for enabling the judgment-creditor to bring his debtor or any other person into Court as a witness for the purpose of making discovery of all property really belonging to such debtor, and liable to attachment in satisfaction of the decree, were so ample, that it was difficult to see what real hardship could accrue to any decree-holder or plaintiff in a suit from the withdrawal of the power referred to.

He (Mr. Cockerell) had now come to the discussion of what were perhaps the most important of the alterations of the law contemplated by the Bill upon which he had to offer explanations. He referred to those provisions which reserved exclusively to Courts not inferior to the district Court powers which were by the existing law vested in all Civil Courts; and in treating of this subject he would first notice the details of this policy and then comment briefly on its general principle.

By section 223, any Court subordinate to a district Court desirous of having its decree executed by some other Court was precluded from sending the decree direct to such Court, but must submit the case to the district Court to which it was subordinate, and full power was given to the district Court to dispose

of the question, as to how the decree so sent up to it was to be executed, in such manner as it might think fit. Under the existing law, a subordinate Court might send its decree to be executed by another subordinate Court within the same district, and consequently subject to the same district Court; but if the decree had to be executed beyond the limits of the district in which the Court passing such decree was situate, the latter Court was required to send it to the principal Court of the district in which it was desired to have the decree executed. It might be said, therefore, that the expediency of decrees not being executed outside the jurisdiction of the Court passing them, without the matter being in some measure at least brought within the control or cognizance of the superior Court, was already recognized.

By section 304 of the Bill, Courts subordinate to the district Court were debarred from ordering sales of immoveable property in the execution of decrees. The very important question of the sale of land in the execution of decrees, and the extent to which it should be restricted had already been discussed at much length by his hon'ble and learned friend (Mr. Hobhouse), and he (MR. COCKERELL) would only say here that in his opinion the great facility afforded to the sale of land for the realization of the amount of a money decree by the present Code of Civil Procedure was one of the greatest blots on our administration. Any measure that would mitigate and reduce the proportions of this evil was expedient, and the curtailment of the agencies by which such sales could be effected must be regarded as an effective step towards their discouragement.

By section 386, the power of issuing a commission for the taking of evidence of certain officials and persons residing beyond the jurisdiction of the Court issuing such commission had been restricted to district Courts and Courts of Small Causes. Such commission would probably in most cases be addressed to other Courts or officers of a superior status to that of the subordinate Court which required the commission to be executed.

By section 505, the power of appointing a receiver for the management of any property forming the subject of a suit was withdrawn from Courts inferior to the district Court. The determination of the question as to whether any property should be taken from the person in possession of it at the time of the suit, as also the selection of proper persons for the responsible office of a receiver, were matters requiring much judgment. It was doubtful, moreover, whether the lower Courts had a sufficient field open to them for the selection of such persons.

Section 650 contained special provisions, to which he believed there was no equivalent in the present law, in regard both to the mode of attaching property beyond the jurisdiction of the Court desiring to make such attachment, and the Courts by which such attachments might be ordered. Under the Code of Criminal Procedure, if a Magistrate wanted to attach any property for the realization of a fine or otherwise, situate beyond the local limits of his jurisdiction, he must get his warrant backed by the Magistrate within whose jurisdiction the property was situate; and it was now proposed to adopt a similar rule in Civil Procedure; the Court desiring to attach any property situate within the jurisdiction of another Court would have to send its requisition to such Court to procure the attachment; and this being so, the reasons which had led to the withholding from a subordinate Court the power of putting in motion a superior Court for the execution of a decree passed by such subordinate Court would apply with equal force to the case of the attachment of property out of the local jurisdiction of the subordinate Court.

It was to be observed that in all these cases the proper exercise of the power which had been confined to Courts not inferior to district Courts, required in a greater or less degree experience, and that discretion and sound judgment which are the outcome of experience. It would be seen that in the structure of the Criminal Procedure Code, the principle of the inexpediency of entrusting large discretionary powers to persons wanting in experience had been carefully maintained. For instance, the power to put the police in motion in connection with any criminal case had been very sparingly conferred on the lower grades of Magistrates, and generally it might be said that all quasi-extra judicial functions requiring tact and discretion for their proper performance had been assigned to the several classes of Magistrates in exact proportion to their standing and experience in the exercise of Magisterial duties.

If this distinction was held to constitute a wholesome rule, as it avowedly did, in the determination of the jurisdiction of the Criminal Courts, why should it be wholly disregarded in Civil Procedure? Under the present law, the veriest tiro in the administration of civil justice was invested with as large discretionary powers as the principal Civil Courts. He (MR. COCKERELL) considered that the changes in this system which would be introduced by the Bill, if passed into law, in its present shape were of a most salutary character and urgently called for. He would add that he regarded as most satisfactory the re-affirmation in this very important measure of the correctness and soundness of this

principle on which he had been commenting, and which seemed in danger of being so completely ignored in some quarters; and he thought the enunciation of this principle especially opportune at a time when, as he understood, it had been seriously proposed to appoint to posts of great responsibility requiring the exercise of much tact, discretion and energy, men whose antecedents had in no way tested their fitness and capacity for the proper discharge of the very arduous duties attaching to such posts.

In regard to the explanation which he had made as to the policy of the amended Bill in withholding certain discretionary powers from Courts subordinate to the district Court, he desired not to be understood to hold that none of the powers to which he had referred in detail could be safely or wisely entrusted to any of the subordinate Courts. He was far from entertaining that opinion; many of these subordinate Courts were doubtless thoroughly qualified to exercise most of these powers. Indeed, in their case, the only exception that he would be inclined to make would be in regard to sales of land, which matter he would reserve to district Courts exclusively in order to limit the exercise of the power of sale to as few hands as possible. But it must be remembered that this Bill was to apply to the whole Empire, and it would be very difficult, if not impossible, under the varying conditions of the several provinces in regard to the constitution of Civil Courts, to draw the line otherwise than at the district Court, so as to exclude all the Courts that it would be desirable to debar from the exercise of these powers. No other line of demarcation, he believed, would meet the circumstances of all provinces, and so it resulted that some competent Courts must be excluded in order to avoid the risk of conferring the powers in question upon the incompetent.

It might perhaps be objected that during the currency of the present Code of Civil Procedure, the tone and character of the lower Courts had vastly improved, and that there was consequently an apparent inconsistency in withdrawing from these Courts this extra judicial jurisdiction which had uniformly been exercised by their predecessors. Doubtless, the knowledge of law, and indeed general intellectual attainments of the Judges of the inferior Courts of the present day, were very superior to those of the Judges who had gone before them, and this superiority was probably universal; but the judicious exercise of the discretionary powers which had been referred to could not be regulated by any rigid prescription of law, and depended rather on the possession of other qualifications, such as the good judgment, tact and discretion which resulted

from a thorough acquaintance with the habits, thoughts and feelings of the masses of the people, and a cordial sympathy with their customs and usages.

Now his own personal observation had led him (MR. COCKERELL) to think, and his remarks on this subject must be understood to apply to the province (Bengal) in which his experience had been obtained, (for he had little personal knowledge of the effects of the present system of education upon the people of the other provinces of the Empire), that the circumstances in which the youth of the present time attained this improved legal knowledge and superior mental and intellectual culture were such as to unfamiliarize them with the character, customs and feelings of the majority of their uneducated or imperfectly educated countrymen, and to place them out of harmony with their most cherished usages and prejudices. In these respects he thought that the Munsifs of the present time, most of them young men who previous to their appointment had but recently been emancipated from the school and college course of education conducted on the European system, did, though otherwise more competent, compare disadvantageously with the class of men who had preceded them in those offices. Indeed he (MR. COCKERELL) would go further and say that many of the class from which the present race of junior Native Judges was taken had scarcely a greater degree of personal acquaintance and familiarity with the habits and customs of the people generally, and even less interest in, and sympathy with, their thoughts and feelings, than the European officer who had spent some years amongst them.

It was proposed (section 335) to allow the arrest of a judgment-debtor without restriction as to the day or time at which such arrest might be effected. He could hardly say how far the existing law might be said to be altered by this provision, for the law of India contained no rule on the subject, and it was doubtful whether the law of England as contained in a Statute of Charles II, entitled the "Lord's Day Act," which allowed no service of civil process on Sundays, and the English practice which, he believed, admitted of no such service taking place between sun-set and sun-rise, applied to this country. There had clearly hitherto been some uncertainty on the subject which it was desirable to remove, and in regard to the question of principle, the Committee had come to the conclusion that so long as the law sanctioned arrest and imprisonment for debt, there should be no restriction having the force of law in regard to the time at which a judgment-debtor should be liable to arrest Many persons were opposed to the policy of recourse to arrest and imprisonment for debt in any case. He (MR. COCKERELL) entertained himself strong

objections to such arrest and imprisonment in the case of women, and he was not prepared to say that he would not concur as to the propriety of their abolition in regard to all persons, but this was a very large question and not directly raised in the Bill under discussion. Whilst the law permitted this form of procedure, it seemed to him only reasonable that such permission should be absolute and without any qualification.

The last, but not the least important, of the proposed alterations of the law to which he had to draw attention now was that in regard to suits against the Government, or any public officer respecting acts done by him in his official capacity. At present, in Bengal and elsewhere, these suits might be instituted in any Court, at the option of the person suing. The Bill (section 416) provided for the restriction of such institutions to district Courts. There was nothing new in the principle of such a rule; it had been in force in the Bombay Presidency from the date of the earliest Regulations, and re-affirmed in the comparatively recent enactment of the Bombay Civil Courts Act (XIV of 1869). In Bengal, up to the enactment of the present Code of Civil Procedure in 1859, only a limited number of Government officers were liable to be sued at all in a Civil Court in respect of any public act. The Bengal Regulation III of 1793, in its preamble, set forth the considerations on which independent Civil Courts were established, and the limitations under which the Government was willing to allow its interests and the acts of its officers to be submitted to their arbitration:

"To ensure to the people of this country the uninterrupted enjoyment of the inestimable blessings of good laws duly administered, the Government has determined to lodge its judicial authority in Courts of justice; and has resolved that the authority of the laws and Regulations as lodged in the Courts shall extend not only to all suits between Native individuals, but that the officers of Government employed in the collection of the revenue, the provision of the Company's investment, and all other Financial and Commercial concerns of the public, shall be amenable to the Courts for acts done in their official capacity in opposition to the Regulations."

By section 10 of this Regulation the public officers who could under the foregoing declaration be sued in the Civil Courts were specified. They were the Collectors of Revenue and Customs, Commercial Residents, Salt Agents, Mint and Assay Masters, and their respective Assistants. By subsequent Regulations, Opium Agents were similarly made amenable to the Civil Courts. As Regulation III of 1793 applied only to district Courts, it might be questioned whether the Government or the public officers above referred to could have been legally sued in any other Courts.

All this went to show that the restriction contemplated by the amended Bill was wholly in accordance with the spirit of the law up to a comparatively recent period. Of the ill-effects of the present system, under which the Government and its officers could be sued in any Court in Bengal,—where from various causes the Government and its Officers were probably much more frequently sued than in any other province,—he (MR. COCKERELL) could give no better evidence than reading to the Council extracts of a valuable paper on the subject of this Bill contributed by the Legal Remembrancer of Bengal (Mr. Bell), who stated as follows:—

"The most unseemly conflicts often arise between the local Executive and the local Judicial Officers. It frequently happens that a Munsif and a Deputy Magistrate are located at a sub-division. They are quite independent of each other, and there is a natural rivalry between them as to which of them shall be accounted the greatest. The Deputy Magistrate perhaps passes an order under the Criminal Procedure Code, directing the removal of a hut as an obstruction. The owner at once files a suit in the Munsiff's Court to have it declared that the ground upon which the hut stands is his private property, and prays the Munsif to issue an injunction to stop the Deputy Magistrate from carrying his order into execution. I could refer to a number of cases in which these unseemly conflicts between the local Munsif and the local Deputy Magistrate have occurred. In one case a Munsif went so far as to issue a warrant of arrest against an Assistant Magistrate for not obeying an injunction which the Civil Court had illegally issued.

"I will give another illustration of a case which came before me last month. An Assistant Magistrate in charge of a sub-division had sentenced a zamíndár to pay a fine, or, in lieu of payment, to suffer a certain period of imprisonment. The order was passed while the Assistant Magistrate was in camp, and as the zamíndár was not provided with the money to pay the fine, he was necessarily forwarded in custody to the lock-up. As soon, or almost as soon, as he reached the lock-up, his friends brought the money, paid the fine, and obtained his release. The zamíndár thereupon sued the Assistant Magistrate for damages, on the allegation that the Magistrate had acted maliciously in passing the sentence when he was in camp, and there was a further averment that the Magistrate had not accepted the fine when tendered.

"The first part of the plaint clearly disclosed no cause of action, for it did not allege that the Magistrate had acted without reasonable and probable cause; and the second part of the plaint merely involved a simple question of fact whether the money had been tendered or not. The Munsif, however, tried the case as if he had been an appellate Court over the Assistant Magistrate. He censured the Assistant Magistrate for trying the case in camp, for delaying to examine the witnesses, and for a number of other matters into which a Civil Court has clearly no jurisdiction to enquire, and he concluded an illogical judgment by dismissing the case, but casting the Assistant Magistrate in costs, because, in the judgment of the Munsif, the proceedings of his Court had been irregular. I have seen a great many similar cases, and I must record my deliberate conviction that it is most inexpedient to allow local Munsifs to

try suits against local Executive Officers. Such suits should be instituted before the Judge, and it should be left to his discretion either to try the case himself or transfer it to one of his subordinates."

He (MR. COCKERELL) concurred entirely in this view of the question, and from his own experience as Legal Remembrancer could confirm all that had been advanced by Mr. Bell against the present system. The cases cited by that gentleman were suits against the Officers of Government in respect of public acts, but he remembered suits, in which the Government had been plaintiff, dismissed by Munsifs who proceeded to deliver themselves, in their recorded judgments upon the cases in question, of gratuitous diatribes against the policy pursued by Government on large and important questions, in regard to which from want of knowledge of the circumstances they were not in a position to form any opinion. It was on every consideration inexpedient to allow such opportunities for the arraignment of the conduct and action of the Chief Executive Officer of the district, as the local representative of the interests of the State, by the Judges of the lowest grade of Civil Courts.

It was proposed to accompany this restriction as to institutions of this kind by a power of transfer to selected subordinate Courts. This also had been recommended by the Legal Remembrancer and was certainly necessary in Bengal where the District Judge might and frequently would not have the time to try himself all suits instituted against the Government or its Officers.

A very necessary provision (section 424) had also been inserted to compel previous notice of such suits. This was very much wanted, the number of such suits would probably be materially reduced by this obligation, as it often happened that matters which were taken into Court and made the subject of a suit could have been easily adjusted by some amicable arrangement, if the parties having a ground of action had taken the slightest pains to make known their claim in the proper quarter and obtain a private settlement of the subject of dispute. There was in Bengal at least, he feared, a too great readiness on the part of persons who considered themselves aggrieved by some action of the Executive authorities to rush into the Civil Court and submit their grievance to its arbitrament, without making the slightest endeavour to obtain the redress to which they considered themselves entitled in any other way. He (MR. COCKERELL) remembered a case in which whilst he was in correspondence with the subordinate Executive authority on the merits of a particular claim, the claimant went into the Civil Court, and the next thing that he heard

in regard to the claim was that a suit had been instituted for its enforcement against the local officer referred to.

There were precedents also for the proposed rule in regard to this matter in the general Police Act of 1861, and the various Municipal Acts which had been passed since that date, in all of which the issue of notice prior to the institution of a suit against a public officer for acts done in his official capacity was made a condition essential to the validity of such suit.

He had no further remarks to make on the provisions of the Bill at the present time, and would only add that in his opinion it constituted even, as at present arranged—and further improvement ere it became law might be anticipated—a very decided amelioration of the existing Code of Civil Procedure.

The Hon'ble MR. HOPE said that as his name appeared upon the Report of the Select Committee on this Bill, presented to-day, he thought it was only just, both to his co-signataries and himself, that he should draw the attention of the Council to the fact that he had only very recently been made a Member of the Committee. From that, it followed that his colleagues on the Committee had had to bear the burden and heat of the day in this very elaborate, troublesome, and difficult matter; and, on the other hand, that perhaps his responsibility in having signed the Report might be considered to be of a somewhat more limited nature than it otherwise would have been. His position in this matter would appear to be one to a certain extent *ab extra*, not indeed that of the jealous stepmother; but rather he would say of the friendly critic, than of the confident and yet modest author.

He would now observe that the Act of 1859 which it was proposed to repeal and replace by another was the first of those great codes passed for India with which we were all familiar. The laws which it superseded were framed in the earliest years of British rule in this country; they were passed in the face of the practical difficulties of governing large and ill-understood nations, of whom it might fairly be said that we knew their law little, their customs less, and their tendencies not at all In consequence of this the laws passed at that period with regard to civil judicature almost all of them bore the character, if he might so speak, of a compromise between legal theories upon the one side and the necessities of the situation upon the other. They contained many of the technicalities, and not a few of the absurdities, of English law. English law, he need scarcely say, enunciated in the most clear and unmistakeable terms the

majority of the great principles of eternal truth and justice which had been recognized in all ages and countries throughout the world, and it had been copied in those respects by the codes of almost all civilized nations. But, on the other hand, it must not be forgotten that just at the very time when it was being declared by one of our great Chief Justices to be the perfection of human wisdom, it was permitting women with children at the breast to be put to death for thefts of a few shillings, while Counsel endeavoured to mystify each other, as they had long mystified the outer world, by a combined jargon of monkish Latin and Norman French. On the other hand, those laws contained a number of simple and somewhat rude provisions which were alien to the text, and, in many cases, to the spirit, of British law, but at the same time were dictated by sound policy, humanity and common sense.

Such laws as he had endeavoured in these few words to describe, Act VIII of 1859 came in to supersede. No doubt, it would be unjust to say of the distinguished men who took a part in preparing and bringing into law that Act, what had been said of the Bourbon dynasty at the time of the Restoration, that though their experience had been what it was, they had learnt nothing, and forgotten nothing. At the same time it was, perhaps, at any rate not too much to say that it would appear, to some of us at least who can now look back, that they did not sufficiently realize two of the great facts—he might say characteristic features—of the society by which they were surrounded. One of these features was that it was, in India, an entire anachronism to treat all Her Majesty's subjects equally in the eye of the law. It might, no doubt, be very right, proper and necessary to do so in Middlesex, or parts of England less civilized than that; but it was different here. To class in the same category, and furnish with the same weapons, and put under the same disabilities, the astute Brahman and the cunning and greedy Baniyá, together with the wild tribes of our remote territories, such as the Bhíls, and others, such as even the simple kunbi, who were so different in every respect—to put them all together, and regard them as being equal in the eye of the law, was only to commit them to a most unequal and unjust contest. Another feature which they would appear not to have realized was, that the educated oriental intellect had peculiar tendencies to technicality and subtlety. In bye-gone days we saw those tendencies very clearly in the wondrous intricacies of the Sanskrit grammar, and also in the elaborate account system of the Mahrátha Government so well described by Grant Duff; and if we came down to our own day we found the same talent produced, on the one side, a few Native

Judges and Pleaders, of whom it might be said that they would be a credit to any country; and on the other, a class of money-lenders and low agents, who hung on to the inferior Courts, together with certain of the lower officials of such Courts, who for astuteness, greed, hardness and corruption were probably unequalled anywhere. Now, through non-realization of these characteristic features, Act VIII of 1859, instead of weeding out from the previous law all the elaborate technicalities which were then known to be so injurious, and all the absurdities which were fast becoming discredited in Europe itself; instead of doing this and on the other hand, embodying all the practical safeguards it contained and enlarging them with others which sixty years of experience had proved to be necessary, came forward and took the opposite course. It struck out such humane provisions as, for instance, the exemption, in the case of the judgment-debtor, of implements of trade and agriculture and the clothing of his wife and children from attachment and sale; and the result of the whole including, other legal changes then made, was that the unfortunate lower classes were chastised with scorpions, whereas before they had only been chastised with whips.

The consequence was that under the stimulus thus given there was a rapid continuation of the revolution which the defects of the earlier law had begun. From almost all parts of India the same cry arose regarding the indebtedness of the agricultural classes, the transfer of land, by sale or mortgage, to the money-lending portion of the community, and the hardship which resulted from property coming into the hands of those who were not likely to be good landlords, and who simply took it and held it for the purpose of making it a means of battening on the wretched cultivators who became their tenants. Now, on this subject he had got beside him one very large and ponderous volume which consisted of evidence taken by the Commission on the Dekkhan Riots in the Bombay Presidency; and another equally large volume containing a series of reports and papers collected from all other parts of India, which went to prove the existence of the same conditions there. There was not the slightest lack of evidence that almost everywhere the ryots stigmatized the Civil Courts as the cause of their misfortunes, and as the curse of their country. He feared that he might be supposed to have used exaggerated language in the remarks which he had felt it his duty to make. He could support what he had said by abundant proofs, but as time was short he would merely mention to the Council that Sir George Wingate, who was very well known as one of the most able of our administrators for some years in the

past generation, after writing very much in the same strain as what he had now been saying, used of the ryot the following words: —

"He toils that another may rest, and sows that another may reap. Hope deserts and despair possesses him. The virtues of a freeman are supplanted by the vices of a slave."

The whole tenor of his remarks was that the moneyed class, even then, had got the ryots completely at their mercy, and left them barely enough to keep the life in their bodies, the proceeds of their lands being almost entirely carried off. But there was, perhaps, a better and more recent authority than Sir G. Wingate. Lord Elphinstone, who, after holding the Government of Madras, succeeded to the Government of Bombay in the troublous times of the mutiny, and of whom it was well known that for calmness, impartiality of judgment, and a capacity for seeing clearly all things around him, he had perhaps no equal excepting Lord Canning himself, remarked as follows on this subject:—

"His Lordship in Council entertains no doubt of the fact that the labouring classes of the native community suffer enormous injustice from the want of protection by law from the extortionate practices of money-lenders. He believes that our Civil Courts have become hateful to the masses of our Indian subjects from being made the instruments of the almost incredible rapacity of usurious capitalists. Nothing can be more calculated to give rise to widespread discontent and disaffection to the British Government than the practical working of the present law."

But, in addition to those two authorities to which he had referred, there was a very large number of others. He might mention that he had seen almost exactly the same sentiments expressed in two Native newspapers in Bombay within the last fortnight. In our Acts which had been passed for the protection of Taluqdárs, Jágírdárs, Zámíndárs and Thákurs, there had been a practical recognition of the principle of what he had been saying. No doubt all those classes of the nobility and superior gentry had been relieved for sufficient reasons, but at the same time he could not help remarking that they were extremely fortunate, and owed their good fortune to their position, and not to any urgency of their case superior to that of the great mass of the people around them who, so far as they were concerned, rendered the passing of such Acts altogether superfluous. If there was, as had been urged in the passing of these Acts, a necessity for having the upper classes loyal, well-affected and contented with our rule, surely there was an equal necessity for having the great mass of the people in the same frame of mind. It was not a light thing to have the population of whole tracts rising in agrarian outrage as they

had done in Western India, and if we left this fact unheeded, we need not be surprised if at some future time we found that it was but the muttering of the thunder which preceded the storm. The upshot of all, therefore, that he had said was that it seemed to him that we must look at the report now presented chiefly from the point of view of how far it provided an effectual remedy for the gigantic evils to which we could not shut our eyes, and how far it retraced all such steps of past legislation as experience had proved to be false. He would wish therefore the assent which his signature to the Report implied to be taken as qualified in this sense. In the remarks he had made, however, he would beg not to be for a moment understood as casting any imputation upon the members of the Judicial Department, European or Native, who administered the law. His quarrel was at present entirely with the law itself; and equally he did not mean to imply that his colleagues, who possibly in these matters might not be inclined to go so far as he was going, were blind to all he had brought forward. The question, however, appeared to him to be of such importance that he felt he ought not to hesitate in expressing his opinions upon it in somewhat strong terms

In the Bill itself which accompanied the Report presented to-day, he noticed, with pleasure, a certain number of provisions, in which it appeared to him a vast improvement had been effected. One of those was the supervision of the Small Cause Courts, the details of which had been alluded to by his hon'ble colleague. Another provision was that by which trials were required to be, as far as possible, condensed, instead of being perpetually adjourned for a week, a fortnight, or a month at a time for practically insufficient reasons. A third was that which permitted the successor to a Judge to act upon the evidence taken by his predecessor, which would do away with an evil which in some instances had gone to the extent that after a case had been brought up to a state of decision, everything had to be begun again, simply because the Judge had been removed to another station or from some other similar cause. Again there was the abolition of general attachments, and likewise the exemption from attachment and sale of certain necessary property of judgment-debtors,—their implements of trade and husbandry, their clothing, the houses in which they lived, and so forth,—which his hon'ble friend, Mr. Hobhouse, had fully commented upon. Further there was the definition of the interest to be sold as far as it was possible to define it, a point of the utmost importance, and one which he trusted might even yet be made more clear before the Bill became law. Again there was the rateable division

of the assets amongst the judgment-creditors, and in conclusion there was the reduction of the periods of attachment and of imprisonment in cases of specific performance and injunction.

Those were all points upon which, as he had said, a considerable improvement had been effected. There were some others, however, upon which, he confessed, he felt considerable doubts, but he wished to be considered as reserving his final opinion upon them for three reasons which he would explain. One of course was that he had only very recently joined the Committee, and that he had not, therefore, had the advantage of hearing the whole of the arguments which had induced his colleagues to draw the Bill in these instances in the form in which it now stood. Another was that there was a large body of fresh evidence of which the two volumes to which he had just now directed the attention of the Council were only about one-third, which had been mostly collected by the Commission appointed by the Bombay Government to consider those agrarian riots in Western India to which he had already alluded, and his colleagues, or the Council, had had no opportunity of studying it. Indeed he must himself confess that he had only been able to get through it in a rather superficial manner. The third reason was that this Report of the Puná Commission, although it had been for some months before the Bombay Government, had not yet been formally considered and disposed of by them, nor, in consequence, had it come before the Supreme Government. Now, it would be very important to know the opinions of those two high authorities before the Committee themselves came to a final decision upon the subject-matter of the Report. It might, perhaps however, facilitate future discussion both in Committee and in Council, if he were to mention, in as short terms as he could, bearing in mind the length to which the discussion had been already prolonged, a few of the principal points which appeared to him to require consideration, and he would do so in the light of some of the evidence which this Report had brought forward, premising that the Commission who had submitted it was a Commission in the highest degree worthy of the confidence both of the Government and the public, inasmuch as it was composed of two most distinguished officers of the North-West in succession, one of our most rising Bombay Civilian Judges, a talented Revenue Officer, and one of the oldest and most experienced Native administrators of Western India. Also, as regarded the appendices, he might say that the great mass of evidence which they contained was not merely the evidence of Revenue Officers who, as we were all aware, were supposed to be very excitable persons, but also of Judicial Officers, both European and Native.

One of the points he would propose to notice very rapidly was the question of the service of a summons. His hon'ble friend Mr. Cockerell had already gone at some length into the question, and he would at present merely say that the Committee had rightly determined to secure evidence first of all that service of summonses was not withheld, and also that non-service was not falsely reported, for fraudulent ends. It was, however, still a question whether the assistance of the village officers of Government should not in some manner be brought in so as to secure that the process-server should not simply return saying that he could not find the man, but should bring with him some report of a proper and reliable person saying that the man was absent, and where he had gone, in order to bring him back or otherwise ensure the proper serving of the summons.

Another point upon which his hon'ble friend Mr. Cockerell had also made some remarks was that of *ex parte* suits. Those suits were of particular importance in the Bombay Presidency, inasmuch as they stood at about 66 per cent. of the entire number adjudicated upon. The Committee ascribed this large proportion to the ignorance of the debtors, to their inability to meet the money-lender in Court without the expensive aid of pleaders, and also to the small amount of the debts, as to which it was a remarkable fact that out of 422,000 cases, no less than 295,000 were about less than Rs. 20. It would be a matter here for consideration whether the creditor should not be required in all *ex parte* proceedings to prove the existence of the debt which he claimed, and also to go into Court with clean hands, that was to say, that he should be obliged to shew that he had kept regular and proper accounts, and had been giving receipts for any payments that he had received from the debtor, and that he should shew this by reference to his general accounts, and not simply by producing a falsified sheet relating only to the particular debtor himself. It might of course be said that the Courts were insufficient for such enquiries. But, on the other hand, it was pointed out in one of the papers accompanying the Report that taking for instance the Bombay Presidency, there was a surplus of no less than ten lákhs of rupees of stamp-duties received in the subordinate Courts, that in the Courts of the whole Presidency there was a surplus of two lákhs and a half, and further that this surplus of two lákhs and a half would be about four lákhs and a half, were it not for the enormous expense of the Original Side of the Bombay High Court. The expense of the Original Side of the Bombay High Court, this paper said, was about three times as much as that of the Original Side of the Calcutta

High Court, notwithstanding that the business transacted was only one-third larger, and this extra payment thrown upon the ryots in the Mufassal amounted to about one rupee and four annas for every case decided throughout the country. Those facts no doubt, if they were such as they had been described, would appear to be worthy of great consideration, and might perhaps pave the way to having a more careful enquiry into *ex parte* suits than, under present arrangements, would be possible.

Another point he would refer to was that relating to the introduction of English into any Court by the order of the Local Government. He must confess that he himself did not quite understand why this alteration should be made, and it appeared to him to be one extremely to be deprecated. The public, he considered, suffered abundantly, as it was, from the delay, cost, and blunders of translation, both oral and written, of evidence in High Courts under the present system, without having the same evil extended to the Mufassal. As to the impression which his hon'ble friend, the Mover, entertained, that this system would be attended by a saving of expense, he ventured to think that the result would be exactly the reverse, because, whereas at present only those papers were translated which were necessary for appeals, under the proposed arrangement the translation would affect all the exhibits and documents of that kind in every case, whether it was appealed or not; and, further, there would be a fresh evil introduced: the stream of truth would be in danger of being poisoned at the fountain-head. When a document was put in to the lower Courts, at once it would go into the hands of some ill-paid subordinate for translation into English, and a very large door would thus be opened for every kind of fraud in the translation itself, which the superior officers would have no means of checking whatever With regard, again, to taking the evidence of the witnesses themselves, it was true that the Code here provided that whenever the evidence of a witness was taken down in a language which he did not himself understand, it should be interpreted to him in his own language; but he (MR. HOPE), from a considerable amount of experience in this matter, had no confidence whatever in such *vivâ voce* interpretations, and he did not see how a man could be made liable for perjury for a statement made unless the statement had been read out to him from writing in his own language.

Another point was the introduction of the new English provision with regard to the discovery of documents. It appeared to him that this measure was extremely likely in this country, where we had to deal with so many

peculiar tendencies, to lead to a paper war between astute pleaders; and the result might be, that one party or another might be involved in the serious penalties which the Act now provided.

Another important matter was the introduction of the system of affidavits, which his hon'ble friend, the Mover, had stated were an entirely new instrument in the Mufassal. He should say, however, that they appeared to him very much like an old friend with a new face. When he came to India he found that a practice, though then dying out, was still existing in many parts of the country. The practice was this, that when cases had to be heard the presiding officer called four or five of his clerks, and said to one—"You sit in that corner and take the evidence of that witness," and to another he gave similar orders, and so on with the rest; and in this way four or five different men's evidence was taken simultaneously. Half a dozen cases were thus conducted simultaneously, and when all the depositions had been taken they were read out hastily, and a decision was passed without the Officer having seen the demeanour of the witnesses, or the witnesses knowing what they were recorded as having said. It was well known that in England the system of affidavits lead to a great deal of "swearing up to the mark" and of learning the affidavit by heart so as to stand cross-examination, and in this country there were infinitely greater facilities for its abuse. If admitted at all, it should be so for pure matters of form only.*

A further point was that of payments out of Court, which was proved to be one of the most fruitful sources of oppression in the Mufassal. If time were not pressing, he could quote remarks by more than one Judge in the Mufassal in which it was said that people were sometimes brought up before them who had paid the amount of a decree three or four times over; that owing to the creditor having been so fraudulent as to induce the debtor to make payments out of Court, the creditor was enabled to snap his fingers in his face and to get execution of the decree over and over again. He was aware that there had been a certain amendment made in the Bill on this subject, but whether that met all the objections which the Commission brought forward, or whether the abolition of the provision as to requiring payments in Court was advisable, were still questions for consideration.

With regard to sales of land, he had nothing to add to the very full exposition of the subject made by his hon'ble friend, the Mover. On the whole, he should say that the provisions of the Bill pretty well came up to the recommendations in the Report of the Dekkhan Riots' Commission in that particular. At

the same time the Report itself did not seem to be very definite on this particular point, and its appendices contained a variety of conflicting opinions on the subject by a large number of very high officials, both in Judicial as well as in Revenue employ.

Another point, which he was obliged to notice, was the question of imprisonment for debt. The draft of the Bill, now submitted, certainly made a very important amendment in the law, in that when a man was brought up and arrested for debt, the Court was to be bound at once to explain to him that he might have the benefit of the Insolvency Law; and further, if he declared that he wished to take the benefit and gave security for his appearance, he was not to be detained or sent to jail at all. This, no doubt, would remedy the evil, well known to exist now, of ryots being totally unacquainted with the existence of an Insolvency Law. He was also aware that the period of imprisonment for debt had been reduced by the present Bill; but the Commission recommended the entire abolition of such imprisonment upon two broad grounds. In the first place, they urged that it had, in point of fact, with certain exceptions which it was scarcely necessary to particularize, been abolished by almost all civilized nations in the world, and they quoted no less an authority than that of Mr. John Stuart Mill, who said that—

"the ancient laws of most countries were all severity to the debtor. They invested the creditor with a power of coercion more or less tyrannical, which he might use against his insolvent debtor, either to extort the surrender of hidden property or to obtain satisfaction of a vindicative character which might console him for the non-payment of the debt. This arbitrary power has extended, in some countries, to making the insolvent debtor serve the creditor as his slave; in which plan there were, at least, some grains of common sense, since it might possibly be regarded as a scheme for making him work out the debt by his labour. In England the coercion assumed the milder form of ordinary imprisonment. The one and the other were the barbarous expedients of a rude age, repugnant to justice as well as to humanity."

The second argument which the Commission used was with reference to the gross abuses to which this power of imprisonment led throughout the country. It appeared that the terror of being put into a prison, even for debt, was so extraordinary and so unreasonable among the native population, that they were willing to make any sacrifices, even in some recorded instances to the extent of surrendering their wives and daughters to the creditor for immoral purposes, rather than be sent to jail; and further, that it led to absolute slavery, and also to the execution of fresh

bonds upon any terms whatever. They were aware that in some parts of India those powers of imprisonment were said not to be abused; but the Commission also urged that the evidence was, at best, doubtful, and that they must judge the case, not merely by the number sent to jail, but also by the number who did not go to jail, and so obtain the amount of pressure which took place under the application of this provision.

In connection with this matter was the question of insolvency. The present Bill had extended the benefit of insolvency to all judgment-debts scheduled by the creditors, and it had, likewise, increased the limit of the amount for which a man could get an absolute discharge from one to two hundred rupees; but the Commission urged that nothing less would be sufficient, or was reasonable, than a complete discharge. They dilated at great length on the ruinous effects on the industry of the country of depriving the ryot of all stimulus to improving his land or extending his cultivation; they referred to labour bonds, execution, and so on; and they said that, while the creditor had under our Code here more protection than in almost any other civilized Code in the world, the debtor had not only less, but absolutely none at all. They strongly urged that when the debtor got his discharge, he should get it altogether; provided, of course, he was not fraudulent, and that his discharge should not be, as at present, accompanied by a power to seize all his future property for a long period of years.

He had now spoken at a length which he feared must have been somewhat tedious to the Council; but the great importance of the subject of procedure to the entire population of British India must be his excuse. In a very few words it might be said that the classes who were suffering were being ruined, not on account of their own improvidence or of the money they borrowed, but on account of the money which they were falsely said to have borrowed, and which our system enabled their creditors to recover. He had also borne in mind the mass of evidence that was yet to be considered, and the extreme difficulty of getting a Code of this magnitude when once passed, revised again more than once in the course of a generation.

Finally, it was, perhaps, unnecessary for him to explain that he had not spoken as he had with any intention of retarding the passing of the Bill before the departure of his hon'ble friend, the Mover, from India, or from any suspicion that what he had said would have such an effect. All the evidence was now collected and at hand, and he saw no reason why it should not be exhaustively considered with little loss of time. He, undoubtedly,

should regard it as a public calamity if the Bill were not got through the Council before it was deprived of the assistance of one who had guided it from a very early stage with all the acuteness of his intellect, and all the weight of his authority, and if it consequently failed to be the fitting conclusion to an Indian career, which had left so many important landmarks upon our Statute-book and upon our Administration.

The Hon'ble SIR ALEXANDER ARBUTHNOT said that he would not detain the Council many minutes. He wished however to say a few words, first with reference to the observations which fell from his hon'ble friend Mr. Hope regarding section 184 of the Bill, which would enable the Local Government to permit the evidence of witnesses to be taken down by the Judge in English. That was a point of considerable importance, and he had no doubt from what had fallen from his hon'ble friend that the provisions of the section would elicit some criticism. He would here only observe that the provisions in question appeared to him to be exactly similar to the law which now obtained on the subject of Criminal Procedure, and from what he was able to learn from the working of that provision under the Criminal Law in the Presidency to which he formerly belonged, he had every reason to think that the provision was a salutary one. But the point upon which he most especially wished to say a few words to the Council had reference to the remarks which had fallen from his hon'ble friend Mr. Cockerell regarding the want of familiarity, and the want of sympathy, with the great mass of the people who resorted to our Courts, which, in his opinion, characterized the present class of Judges who presided over the inferior Courts, and which he attributed to the particular description of education they received and the training they underwent in qualifying for their judicial functions.

The Hon'ble Member's remarks on the subject were in some measure qualified by the special reference which he had made to the Province of Bengal, but from their general tenor it appeared to him (SIR ALEXANDER ARBUTHNOT) that the Hon'ble Member conceived them to be practically of general application. For his own part he had little or no personal knowledge of Bengal, but he confessed he should be surprised to learn that the views which appeared to be entertained by his hon'ble friend were generally concurred in by the great majority of the officials of Bengal. Speaking for the south of India, he was able to affirm—and he could confidently affirm—that the educated natives who now presided in the inferior Courts were not only far better qualified in respect to education and training for the duties which they

had to discharge, and had not only attained to a higher standard of official honour and integrity than that which characterized their predecessors, but that in respect of knowledge of, and sympathy with, the habits and feelings of the great mass of their countrymen among whom their lives were passed, they were in no way inferior to those who had gone before them. He thought it due to the many acquaintances and to some valued friends whom he possessed among the native official hierarchy in that part of India in which the greater portion of his official life had been passed, an official life which he might remark commenced exactly that day thirty-four years ago, to offer this brief reply to the observations which had fallen from the Hon'ble Member.

The Hon'ble SIR WILLIAM MUIR said that, without detaining the Council at any length, he wished to express the gratification he had felt at listening to the remarks of his hon'ble and learned friend who had brought up the Report of the Select Committee, especially in respect of the provisions for the sale of landed property in execution of decrees of Court. The subject had engaged attention as far back as he could remember, and particularly during the last five and twenty years. It was forced upon public attention most painfully during the events of 1857-58, when the ousted proprietary bodies throughout the country formed one of the most dangerous elements of society. Sale had everywhere ruined numerous hereditary proprietors and village communities, and everywhere had changed them from a contented and faithful yeomanry into a repining and disloyal body of cultivators ever brooding over their grievances and predisposed on the first opportunity to break out into lawless acts. When deprived of their proprietary title, they were still, as a rule, left in the cultivating occupancy of the soil,—powerless for good, but most active and vigorous for evil—a rankling sore in the side of Government.

Under the existing law, it was true, provision had been made for such sales to be conducted by the Collector, and it was at first supposed that that functionary was invested with some discretionary power to avert the sale where possible. The Courts however had ruled otherwise; every endeavour had been made to work these provisions, but the law was so drawn that they were found to be nearly inoperative. Many projects had of late years been discussed with the view of checking the rapid transfer of landed property into hands which were found so unfitted for its management, but they had all fallen through. The powers which it was now proposed to confer upon the Executive would tend greatly to remedy this evil. They would enable the District Officers to interpose effectively, and by lease or farm or mortgage, or even by direct

management, to make the best possible arrangement for saving the property and rescuing the proprietor from ruin if it were possible to do so.

The limitation of the power of directing sale to the District Courts would also be beneficial as shewing the importance attached by the Legislature to the measure, and thus tending to check the indiscriminate transfer of land. It was far from his view, however, to justify this limitation on any grounds disparaging to the lower Courts, or implying distrust of their qualifications. He must dissent from the sweeping condemnation of our Civil Courts by his hon'ble friend Mr. Hope; the Courts would no doubt always be unpopular with certain classes; but he was persuaded that, as now worked, they were not unpopular with the community at large. No doubt our system had been heretofore too rigid and inelastic, and in this matter of the sale of land they had created a great and crying evil. The transfer of land was a result which sooner or later must follow upon the advance of civilization and the introduction of settled laws; but it was a result, as remarked by his hon'ble and learned friend, the rapid and mechanical enforcement of which by our Courts was every way to be deprecated as fraught with much evil. It must come gradually and slowly as society was prepared for it. SIR WILLIAM MUIR also entirely concurred with what had fallen from his friend Sir A. Arbuthnot in reference to the Hon'ble Mr. Cockerell's remarks on the junior ranks of the Judicial Service. He was quite sure that there was no deterioration in them. While much improved as a rule in their mental training and legal knowledge, he did not consider them to be at all inferior to their predecessors in sympathy with the people and knowledge of their habits, as well as in upright and honourable feeling. The case might be different in Bengal; he spoke of course only of the Provinces with which he was personally acquainted. The senior Judicial officers in the North-Western Provinces contained among their ranks men of the highest reputation in the land, such as his friends Muhammad Sayyid Ahmad Khán (now he was sorry to say retiring from the service), Rai Bakhtáwar Singh, and many others who would be an honour to any service; and he felt assured that the juniors would not in any respect, either social, intellectual or professional, be inferior to them.

It was not then for any such reason he was glad that it had been resolved to limit the authority for directing sale to the district Courts; but because the limitation to these higher tribunals would necessarily secure the closer and more uniform attention to the procedure which it was the object of the legislature to enforce. It might be objected that all such limitations to the read-

and immediate sale of a debtor's property were prejudicial to the interests of the judgment-creditor.. No doubt there was force in that objection. But in view of the great political object of securing a contented and useful proprietary, and the grave evils of the opposite, he felt that the balance of gain to the nation was vastly on the side of the course proposed. It was therefore a matter of the highest satisfaction to him to see an object which he (SIR WILLIAM MUIR) had long had at heart so promisingly near completion before his retirement from the country He earnestly hoped that these provisions would before long become law in substantially the same shape as that in which they were now before the Council.

There was but one other subject which he (SIR WILLIAM MUIR) would notice, and that was the imprisonment of debtors. He did not go quite the length which his hon'ble friend Mr. Hope did. But he thought it worthy of consideration whether the law might not be greatly relaxed in the case of female debtors. The subject he understood had received the careful consideration of the Select Committee, who had not seen their way to exempting females from liability to arrest and imprisonment. In British Burma, for example, it was known that women very generally carried on trade on their own account, and could not therefore be well exempted from the penalties to which men were liable. It was otherwise, however, in most parts of the Empire; and considering the position of the female sex in India, it seemed to him that it might be possible to meet the object in view by empowering Local Administrations to make the exemption wherever it was thought advisable. He must admit that in all his inspections of jails in Upper India, the had never me with a civil female prisoner incarcerated for debt; still the difficulty might occur, and it might be wise therefore to bring the law even in theory into accord with the feelings and customs of the great body of the people.

The Hon'ble MR. BAYLEY said he would only detain the Council for a very brief space, as what he had had to say had been generally anticipated by the Hon'ble Members who had already spoken. He could only add his testimony to that of his hon'ble friend (Sir William Muir) who was immediately seated on his right hand, and whose experience in India was even longer than his own, that the present Bill was a very great step towards the improvement of the Civil Procedure Code. He perhaps went further than other Hon'ble Members present in his opinion as regarded the condition of the Civil Courts before Act VIII of 1859 was passed. He believed that the Courts then were—and deservedly—extremely unpopular, and that the

morale and *personnel* of the Subordinate Judges and their staffs were really about as bad as they could be, with some very few exceptions, while the procedure was so complex that it gave opportunities for delay, confusion, corruption and fraud which it was almost impossible in the present day to realize. In the latter respect Act VIII of 1859 effected a very great improvement, and he believed that the point on which it was weakest and in which the present Bill was especially an improvement upon it was with regard to the execution of decrees.

The two sections on this subject to which his hon'ble friend Mr. Hobhouse had alluded were without question originally intended to give a power of interference to the Executive which the provisions now introduced gave with a larger scope and in fuller detail. They were introduced, he believed, at the instance of the then Secretary of State, the present Lord Derby, with especial reference to the results of the mutiny and to the truths which that event brought to light, and he could testify from his own experience that the earlier working of the Act was very much that which was now more distinctly formulated and introduced into the present draft. It was found as a matter of fact however that the wording of the sections as then drawn did not warrant the interpretation first put upon them, and it had been gradually contracted by judicial decision until the sections had almost become null and void. The Bill, however, as it was now drawn would restore what he believed was the intention of the framers of Act VIII of 1859, and also give all the further improvements which experience had suggested. He would instance only one section which had not been noticed by his hon'ble friends who had spoken before him, which seemed a very small and imperfect section in itself, but was nevertheless one which might be found to cover a very great surface. It consisted in this—that it gave power to the Collector, even in those districts in which the Collector was not entrusted with sales of immoveable property, to intervene and to represent to the Court which was about to sell any landed property that he considered that public inconvenience would arise from the sale. He believed it was notorious that in the celebrated case of Koer Singh of Behar the Collector had actually taken steps to relieve him from the weight of his embarrassments, and it was only because by reason of the want of a due provision in the law, and the cumbersome proceedings consequently involved, that the Collector's efforts had failed. Had this section been then law he believed it was not too much to say that Koer Singh would never have gone to rebellion, that the flame of the mutiny of 1857 would never have extended into the

Provinces of Bengal, and what *that* involved and how much might then have been saved he need hardly bring to the recollection of those who were in the country at the time.

He wished now to refer very briefly to some of the criticisms made by his hon'ble friend Mr. Hope. Those criticisms did not exactly tell a flattering tale, but he had no doubt that they would prove to be very useful. On one point they brought out a fact of which officially of course the Council had no cognizance, that was the fact that a mass of evidence had been collected by the Puná Riots Commission. He (MR. BAYLEY) believed that this evidence was of great value, and it had not been before the Council or the Select Committee, nor was it even, he understood, before the Government of India at the present moment; but he had no hesitation in saying that it would be of great assistance in the further discussions upon this Bill, and he hoped that the Executive might be able to take such measures as would hasten the submission of that Report, and even without the opinion of the Government of Bombay, the facts by themselves, he was sure, would be most important. He did not proceed to an examination of the criticisms which his hon'ble friend Mr. Hope had made. He was not prepared to say that even with all the evidence before him he should be prepared to go the length he (Mr. Hope) would; but on some points, for instance with regard to the service of summonses, he believed it was very likely that the facts Mr. Hope had placed before the Council would be very useful in producing modifications of the procedure in that respect. He need hardly say that those who were acquainted with the history of Civil Procedure in India would be aware that all who had attempted to improve that procedure had found it to be the chief difficulty with which they had to deal, and that it was one of the main points brought to notice by the Commission appointed to enquire into the subject of the excessive transfer of landed property and the great frauds which arose in the district Courts of Cawnpore many years ago. The procedure was changed then, and had been changed again and again, and no doubt it was one of the most difficult points that we had to deal with still.

He thought that it was almost impossible that we could have too many facts or recommendations on this point, and he would therefore be very glad to see the evidence regarding it, to which Mr. Hope had alluded. He did not wish to make any further remarks; he was quite prepared to maintain that the Bill as it now stood was a great improvement on all previous legislation in India on the subject of Civil Procedure, and he for one was

willing to lend his aid in the direction of further improvement before it was passed into law.

The Hon'ble MR. HOPE said that, with the permission of His Lordship, he wished to observe that his remarks about the use of English in Court had sole reference to the possible employment of English Barristers in the Mufassal. They had no reference whatever to the Native Judges, who in the Bombay Presidency were all that his hon'ble friend Sir Alexander Arbuthnot had described them to be in his own. He might further, perhaps, make clear, if he had not already done so, that on all the points upon which he had mentioned what the evidence and opinions of the Bombay Commission were, he reserved his own judgment pending the final consideration of the Report. At the commencement he had expressed a disinclination to father everything in the Report of the Committee, and he was equally reluctant to do so as regarded that of the Commission.

The Hon'ble MR. COCKERELL desired, with the permission of His Excellency the President, to say a few words by way of explanation to the Council in reference to what had fallen from certain Hon'ble Members opposite (Sir W. Muir and Sir A. Arbuthnot). He (MR. COCKERELL) was represented as having stated that in his opinion the inferior Civil Courts of the present time were unpopular, or at least less popular than those which had preceded them. Now he certainly had made no such direct statement, and he did not think that his remarks on this question could be reasonably construed as implying that such was the case. What he had said—and he must remind the Council that he had expressly confined the application of his remarks to the Province of Bengal in which alone had he the necessary practical experience to enable him to form a correct opinion on such a question—amounted to this; that the judicious exercise of large discretionary powers could not be secured or limited by any positive rule of law, but depended rather upon the possession of a familiar acquaintance with the habits and customs of the people at large and a thorough interest in, and sympathy with, their social usages, feelings and prejudices, than a scientific knowledge of the law or general intellectual capacity; that the circumstances in which the high class education and superior intellectual acquirements of the young men of the present day were obtained—he referred to their separation from their homes and dwelling in large towns within the precincts of the higher class educational institutions, their aspiration for proficiency in the English language and literature so zealously pursued, that they not only habitually wrote and spoke,

but might be said almost to think in English, and their general anglicized tone, and disregard of the restrictions imposed upon them by the caste regulations and religious tenets of their forefathers—had a decided tendency to estrange them from the mass of their countrymen; and that the highly educated young man of the modern school, in Bengal, was in effect almost as much a foreigner to the orthodox members of his race as the European himself.

The Motion was put and agreed to.

STAGE CARRIAGES BILL.

The Hon'ble MR. BAYLEY presented the Report of the Select Committee on the Bill to amend the Stage Carriages Act.

The Council adjourned to Wednesday the 4th October 1876.

SIMLA;
The 21st September 1876.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla—11-10-76

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Government House on Wednesday, the 4th October 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble John Inglis, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble F. R. Cockerell.

The Hon'ble the Mahárájá Sir Dig Bijay Singh Bahádur, K.C.S.I., of Balrámpur.

NEW MEMBER.

The Hon'ble the Mahárájá SIR DIG BIJAY SINGH BAHADUR took his seat as an Additional Member.

OUDH LAWS BILL.

The Hon'ble MR. HOBHOUSE said that he had now to present the final Report of the Select Committee on the Bill to declare what laws are in force in Oudh. He also proposed, when he had presented the Report, to move that it be taken into consideration; and indeed there were two Reports before the Council, one of which was presented in July last, and which went no further than the presentation. It would therefore be both those Reports that he should ask the Council to take into consideration. He had no right to make such a motion with respect to the latter Report, if any Member of the Council desired to have it for a longer time in his hands; but in fact the alterations made in it were very slight, and he did not therefore think that any inconvenience would

arise from the circumstance that it had only recently been put in the hands of Members of Council. There was also on the list of business a notice of motion in his name that the Bill as amended be passed, but he did not propose to make any such motion as that on the present occasion. He thought it more desirable to leave that to the next meeting of the Council, when he trusted that the more bulky measure in the hands of his hon'ble friend Mr. Inglis would also be allowed to pass, as it was desirable that the two measures, which had been kept in parallel courses, should be passed on the same day.

Before moving that the Report be taken into consideration, it would be convenient that he should recapitulate very briefly that which he had before stated to the Council at greater length, namely, the circumstances which had brought about that state of the law which justified and required a measure of this kind; and it was the more desirable to do so because he had found that the scope and objects of this Bill had been in some quarters misunderstood, and because there were gentlemen whose opinions were entitled to great weight who thought that Bills of this kind were not very artistical productions. But after what had already passed in the Council with respect to the Panjáb Laws, the Oudh Laws, and the Central Provinces Laws, he thought he might condense what he had to say now into a very few sentences.

Upon the annexation of Oudh the Government of India acted in their usual way by introducing laws into the new Provinces by the sole action of the Executive power. What they did was to enjoin the adaptation of Panjáb law, not absolutely, but under certain modifications not specified or specified in no more definite way than by reference to the peculiar necessities and customs of Oudh.

This operation was effected by a letter written from the Government of India in the Foreign Department to the Chief Commissioner of Oudh on the 4th of February 1856.

When he introduced this Bill he quoted from that letter at very considerable length, and he might now read only a short extract from it. Speaking of the Panjáb Civil Code the Government said :—

"But it will not escape your observation that in the preparation of the rules under notice, much attention has been given to the *Lex loci*, and that specially in matters relating to inheritance, marriage, divorce and adultery, adoption, wills, legacies and partitions, as well as in all commercial transactions, a due regard to local usage has been enjoined. It cannot of course be supposed that the *Lex loci* or local custom in Provinces differing so widely as the Panjáb

and Oudh is in all, or even in many, respects identical; and it follows that those provisions of the rules which rest on the *Lex loci* in the Panjáb, cannot with any propriety, or without risk of injurious failure, be extended to the Province of Oudh.

"While, then, the Governor General in Council directs your attention to his collection of principles of law as calculated to afford material assistance in the absence of any better or more appropriate treatise, he refrains from requiring the strict observance of them until it can be ascertained how far they are applicable to the peculiarities of the Province and the customs of its people."

Well then, there was a mode suggested for ascertaining those peculiarities and customs, but either enquiry was never begun, or if begun, it was broken off in consequence of the troubles which soon afterwards ensued. In point of fact there had been no such enquiry, and the law of Oudh had rested from that time to this upon the basis of the Foreign Office letter.

Of course it would be observed that these incomplete operations caused great uncertainty in the law of Oudh. The Panjáb law itself was only an adaptation of Bengal law to the wants of the Panjáb. In the first instance the adaptation was as vague and indefinite as the adaptation of the Panjáb law to Oudh, and it was gradually defined more and more by orders of Government and by judicial decisions. The Oudh law, therefore, had all the uncertainty which attached to the Panjáb law, *plus* the uncertainty which was created by the necessity of adapting Panjáb law to the peculiar customs of Oudh. It was, in fact, the spirit of the Bengal Regulations; and it was doubly distilled, first in its progress from Bengal to the Panjáb, and secondly in its progress from the Panjáb to Oudh; and it was doubly rectified, first by Panjáb custom, and secondly by Oudh custom.

Now the difficulties raised by that state of things had been rather increased than diminished by the action of the Legislature, or rather he should say, by the interpretation which had been put upon the action of the Legislature. Doubts came to be felt about the power of the Executive Government to enact law by its own sole authority, and those doubts found expression in an Act of Parliament—our Councils Act of 1861. That Act recited the doubts that had been felt, and in order to allay them provided that no law should be invalid by reason that the formalities required by the previous Councils Acts were not observed. That enactment had been construed in such a way that it was held to have stereotyped and solidified into law numerous expressions of the Executive Government made in a very casual way—in fact,

every kind of expression whenever and however made to which a legislative character could be attributed.

That was the state of things upon which this Bill was brought to bear. There was a mass of Regulations, all applicable so far as the spirit of them went to the Province of Oudh, but of each of which no man could say how far it was to be applicable, and how far it was not. And there was a mass of Executive orders, of which no man could say beforehand which of them bore a legislative character, and which of them would be held not to bear a legislative character; and there were a number of judicial decisions which had done very good service in defining that uncertain region of the law, but which were liable to be overturned or modified by fresh judicial decisions.

Those were the difficulties that the Oudh Administration had to contend with, and, as regarded the quality of the difficulties, he thought it was impossible to exaggerate it; the quantity had been gradually reduced from time to time by legislation, and was now very largely reduced. Such measures for instance as the Penal Code and the Civil Procedure Code had occupied large tracts of legal territory, and to that extent had displaced the vague law which rested upon the Foreign Office letter of 1856, and substituted for it the more definite expressions of their own. If indeed that were not so, if that area of uncertain matter had not been very largely narrowed by the enactments mentioned, the time would not be ripe for such a measure as this. But it was because the area of uncertain matter had been so very much narrowed that we were now able to deal with the subject and declare the whole basis of the law. There was still indeed a considerable margin of that uncertain matter the nature of which he had described, and it was a marvel to him that so small an amount of practical embarrassment had been felt in consequence of it. Those only know the full extent of the difficulty who had to administer the affairs of Oudh, and he thought it was a matter reflecting the highest credit upon the Local Administration there, Executive and Judicial, that they had kept those difficulties to so great an extent to themselves, and that other people, on the whole, knew so little about them.

He had explained to the Council, when he presented the first Report of the Committee in last July, what the principles of this Bill were; that its main object was to get rid of that mass of floating and uncertain matter which consisted partly of the Bengal Regulations which had been made applicable to Oudh in

bulk, and partly of those Executive orders which had no definite character affixed to them, and of which it might be argued one way or another that they were either purely Executive or had a legislative character.

The way in which it was done was to take some of the Regulations and some of the orders and embody them in the Bill, and then by a general sweeping clause to repeal all those which were not embodied in the Bill. Now it was curious that among the landholders of Oudh there should have been a great misapprehension as to the scope and objects of this Bill. He found that in a memorial presented by them to the Chief Commissioner of Oudh, they expressed alarm at the great quantity of new law that was being extended to Oudh; in fact, they referred to a speech of his (MR. HOBHOUSE'S) which was made when the Bill was introduced in 1873, in which he said that he had ascertained that there were no less than 247 Regulations and Acts applying to Oudh; principally Regulations the spirit of which had been extended to Oudh in bulk by the Foreign Office letter. He then explained, and on a repernsal of the Report he found that his language was as clear as he could make it, the mode in which the Bill proposed to deal with the matter, and which he had just mentioned to the Council. Well upon that, the British Indian Association of Oudh expressed themselves as follows:—

"In regard to the extension to Oudh of the laws in general in force within British India as stated in section 3 of the Bill, and of which the number stated by the Hon'ble Mr. Hobhouse is 247, not only the taluqdars but every other class of the native community in Oudh having any sort of right, connexion or interest in the soil, have been filled with dismay towards the safety of their rights and pledges, and feel apprehensive that they have been suddenly crushed under the burden of 247 laws, to pass through which would be a difficult task, should they attempt to refer to any law for the protection of their rights.

"It is not improper also to observe that it would be a hardship to the people of Oudh to be subjected to the laws which were in force in other Provinces at the time when the Province of Oudh was not under the administration of the British Government, and in regard to which the people of Oudh have had no opportunity by the kindness of Government to offer their views and remarks prior to their enactment.

"It would be right to admit that the people of other Provinces, to suit whose rights the laws were framed, and from time to time modified according to the expediency of the occasion, either on the motion of Government, or on the representation of the public, have had ample opportunity to be thoroughly acquainted with the provisions of every law, their modifications and alterations, and to refresh their memories by their practice and experience; and that if all these various laws, which the honourable Members of the Legislative Council, after a laborious search of some years, have been able to collate with considerable difficulty, were enforced on the people of Oudh so far as they might be applicable to them, it would occupy

them at least some years to understand and commit them to memory, and so long as they are not acquainted with their provisions and consequences, the people would be justified in feeling alarmed on being subjected to them."

No doubt it would take a long time to sit down and commit to memory the 247 Acts and Regulations, none of which under this Bill were newly applied to Oudh, but which antecedently to this Bill had been applied to Oudh ever since its annexation; and he for one should be very sorry if he were told that he must do it within the term of his natural life. But there stood the fact that the Regulations in question were actually applied to Oudh at this moment, and had been working there ever since 1856, and the various Acts had been working there from the time of their enactment, and that there was besides a mass of orders of which any one might be brought forward at any moment, and it was in the breast of a District Judge or Judicial Commissioner to say whether it was law in Oudh or not. And there stood the other fact that we had selected a few of those Regulations—just eleven in number—and that we had selected a few Executive orders, that we had introduced into them such modifications as had been found by experience or by actual decisions to be suitable in Oudh, that we declared those to be law in Oudh, and that all the other mass of Regulations and orders which might now be brought forward and sprung upon the Oudh people as law, we repealed. It was as curious an inversion of meaning as he had ever come across. A Bill which was intended to relieve the Oudh people from a cloud of law which was hanging over them, had been thought to be a Bill which suddenly saddled them with 247 Acts and Regulations not now applying to Oudh. Now he hoped and believed that the matter had been fully explained to them, and that the dismay which those gentlemen had felt—and very naturally felt according to their interpretation of the Bill—had been entirely dissipated, and that they would be satisfied that this measure would clear away a great incubus of possible law from them, instead of saddling them with a body of new law.

He had lately seen another criticism written by a gentleman, whose name he did not know, but who professed at all events to have paid great attention to those matters, and who told us that Bill No. II, which was presented to the Council last July, was the merest skeleton of Bill No. I, because some chapters had been knocked out from Bill No. I. Now he (MR. HOBHOUSE) had explained to the Council what was eliminated from Bill No. I, and why. It was quite true that from Part III of Bill No. I there were some omissions. Some chapters, as for instance that relating to the Court of Wards, were omitted as a mere matter of arrangement, because

they had been transferred to the Revenue Bill. Others, such as that relating to Minority, were omitted, because since the introduction of Bill No. I, we had passed a general law on the subject. Others, such as those regarding Insolvency and Treasure Trove, were omitted, because since the introduction of Bill No. I, laws had been introduced into this Council on the subject, and were now pending before it. And another, namely that dealing with Cantonments, had been omitted merely because it was found inexpedient to alter the terms of the existing Regulation which applied to Oudh until the Military authorities had had more time to consider, with reference to the other Cantonments of the country, how they would desire them to be altered. Therefore, to say that the alteration in that part of the Bill, though the omissions made it shorter, reduced it to a skeleton of itself, was to evince an entire misapprehension of the scope and purpose of the measure. He had always told the Council, and he said again, that the pith and marrow of the Bill rested in the first two Parts and in the schedules appropriate to those Parts. If he were to strike out every other section in the Bill, making appropriate alterations in the schedules, the Bill would still remain, in substance and effect, nearly the same as it was when it was introduced. In fact there had not been a great deal of discussion on this Bill; and so far as itself was concerned, the Council might have passed it a few months after its introduction. The reason why it was delayed so long before the Council was that it was coupled with another measure—the Revenue Bill; on that Bill discussions had arisen that had occupied a considerable time; it was desirable that the whole mass of Oudh laws should be declared to be law at one and the same time; and therefore this Bill had been awaiting the issue of discussions on the Revenue Bill.

With respect to the character of Bills of this kind, he rather agreed with those critics who said that they were not very artistical productions. But his answer was that they were exceedingly useful. We had to deal with a very complicated and difficult state of things, and what we wanted first was to clear the ground. When we had cleared the ground, we might get a good basis for some scientific legislation in the future. He considered the Panjáb Laws Act a very bold and original measure. It was designed by his predecessor, Mr. Fitzjames Stephen, in order to meet a very exceptional state of circumstances, and he (MR. HOBHOUSE) had only been too happy to copy the model of that Act in dealing with the similar case of Oudh.

He would now just mention to the Council one or two of the principal alterations effected by the Committee since the month of July last. There

were none that he could call very important, and the Council would probably be of that opinion when they heard those which he would mention as the most important. He would only refer to three.

In section 20 of Bill No. III, which corresponded with section 21 of Bill No. II, it was provided that it should be the Chief Commissioner, instead of the Judicial Commissioner, who was to have a voice in consenting to the sale of ancestral property in land. That was a subject on which he had to speak to the other Council at some length in connection with the Civil Procedure Code the day, and he then explained to them that in Oudh there was a discretionary power given to the Executive authorities to put a veto upon the sale of land. Now the Judicial Commissioner occupied a slightly ambiguous position. He had considerable executive power over the Courts, but was mainly a judicial officer. He (MR. HOBHOUSE) did not consider that the discretion in question ought to be a judicial discretion. It was to be used by the Executive on considerations applicable to the political and social condition of the country, and it was therefore thought better, in concurrence with the advice of all the authorities in Oudh who had expressed an opinion on the subject, to commit it to an officer who was wholly disconnected with judicial duties.

In section 26, Bill No. III, it was provided that Revenue Agents in Oudh might practise in rent suits. That was a matter which was brought before the Bengal Council in the early part of this year, with respect to the Revenue Agents of the Lieutenant-Governor, and an Act was passed on the subject for the purpose of enabling Revenue Agents there to practise in rent suits. The same reasons applied in Oudh, the only difference being that in Bengal the law had been so changed as to prevent Revenue Agents from practising, and in point of fact they were not in a position to practise when the Act was passed; but in Oudh they were practising, only it was doubtful whether by strict law they were enabled to do so. The Judicial Commissioner was of opinion that it was for the benefit of clients that the Revenue Agents should practise in those rent suits, and the Committee proposed to make that point quite clear by authorizing those Agents to appear, plead and act in such suits.

In section 28 of Bill No. III was a provision which would be of more importance if it was not the intention to make it a part of the general law. It was to the effect that the Judicial Commissioner might, within a certain limited time, call up any decree or order made by any Court subordinate to him, and revise, alter or reverse that decree or order. That was the mode in which the same subject was treated in the draft of the Civil Procedure Code which

was now pending before the Council. And the reason was this, that where that power did not exist there might be conflicting laws in two different districts—adjoining districts perhaps—of the same Province, which could not be touched by any judicial process because there happened to be no appeal to the higher Court. Suppose for instance that a case occurred in which the District Judge or Commissioner had the final decision in his own hands, and that in Oudh two different Commissioners decided the same case two different ways. The Judicial Commissioner had no power whatever to set the matter right. Now the High Courts, wherever their jurisdiction extended, had powers for that purpose conferred upon them by their Charter, and it seemed very desirable that in all Provinces which had an independent judicial administration of their own, the same power should exist. Of course the mischief was one to which we were exposed in different Provinces of India where there was no common appellate superior excepting the Privy Council, and where the Legislature occasionally had to step in to make the law clear; but that was no reason why the same mischief should exist between different districts in the same Province which had a common appellate superior at hand ready to take notice of such things. Therefore it was proposed to give that power to the Judicial Commissioner of Oudh. The section was one which would become quite unnecessary if the Council passed the Civil Procedure Code in the shape now proposed; but the Committee were told that the mischief which he had been describing was in actual operation at this moment, and therefore it was desirable to lose no time in giving the Judicial Commissioner the power which they thought that every superior Appellate Court ought to have.

He did not know that there was any other matter which he need mention to the Council in connection with the Bill; but as this was perhaps the last time that he would have any observations to make on this subject, he wished to say that the measure had been prepared from time to time with the assistance of the authorities in Oudh, who had bestowed the greatest pains and attention upon it. The late Chief Commissioner, Sir George Couper, the present Chief Commissioner, Mr. Inglis, and the Judicial Commissioner, Mr. Currie, had all laboured very hard on it; and indeed he might say that without their assistance it would have been quite impossible to have brought the Bill to the stage at which it had now arrived. He would now move that the Reports of the Committee be taken into consideration.

The Motion was put and agreed to.

STAGE CARRIAGES BILL.

The Hon'ble MR. BAYLEY moved that the Report of the Select Committee on the Bill to amend the Stage Carriages Act be taken into consideration. He had little to add to what he had said on a former occasion. The Select Committee had only slightly modified the drafting of the Bill. The original Act had worked well. The present Bill merely extended the operation of the law both in regard to the area and to the classes of animals to which it applied, and he therefore saw no objection to passing the Bill at the present meeting of the Council.

The Motion was put and agreed to.

The Hon'ble MR. BAYLEY then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council adjourned to Monday, the 9th October 1876.

SIMLA;
The 4th October 1876.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla—18 10-76

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Government House on Monday, the 9th October 1876.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble John Inglis, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble F. R. Cockerell.

The Hon'ble the Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of Balrámpur.

OUDH LAWS BILL.

The Hon'ble MR. HOBHOUSE moved that the Bill to declare what laws are in force in Oudh, as amended, be passed. He said that all that he had to remark on this subject he had said upon the last occasion when the Report was taken into consideration. Nothing had since occurred to make him think that any further observations were necessary, and he would therefore not trouble the Council with any further remarks unless any were called for by the course of the discussion. Seeing however how closely this Bill and the Oudh Land-Revenue Bill were connected together, he would ask His Excellency the President to suspend putting his motion until his hon'ble friend Mr. Inglis had had an opportunity of moving those motions that stood in his name, so that the two Bills might be before the Council at the same moment.

OUDH LAND-REVENUE BILL.

The Hon'ble MR. INGLIS presented the final Report of the Select Committee on the Bill to consolidate and define the law relating to Land-Revenue,

in Oudh, and moved that it be taken into consideration. He said: "A report by the Select Committee on this Bill was presented to the Council a short time ago by the Hon'ble Sir Henry Davies, who then explained fully all the changes that had been made in it since its introduction in 1872: it is consequently unnecessary for me to take up the time of the Council by going over the same ground again. I propose therefore to notice to-day those changes only which have been made in the Bill since the presentation of the Report in July last. A good many alterations have been made in it since then; some to render clear the meaning of certain sections, or to remove doubts that have been felt as to the construction to be put on others; and some to improve the arrangement of the Bill generally. Besides these there are only three changes made by the Committee which require particular notice.

"The first is the alteration made in the arrangement of sections 52 to 55, and the insertion of section 54. There is reason to believe that all the grants that have been made in lieu of rights previously possessed by the grantees have not been confirmed as required by section 52. In order to meet these cases the Committee have inserted section 54, which provides that if a Court, to which an application has been made under section 53, finds that the grant, which the grantor seeks to resume, has been made in consideration of the loss or surrender of a right previously vested in the grantee, but that it has not been confirmed or sanctioned as mentioned in section 52, the Court shall refer the case to the Chief Commissioner, who shall make such order in it as he thinks fit.

"The next section to which I have to ask the attention of the Council is section 158. To this section the Committee have added a clause, which provides, first, that if the Deputy Commissioner finds it necessary to annul the sub-settlement of any mahál in order to recover an arrear of rent due on it, he shall refer the case for the orders of the Chief Commissioner, and secondly, that on the expiration of the period for which any subsettlement may have been annulled, a new subsettlement shall be made under section 40 of the Bill. I am not certain that this last clause was necessary, but as doubts were entertained on the subject, and as the taluqdárs were apprehensive as to what the effect of the annulment of a subsettlement might be the Committee considered it as well to provide distinctly that, on the expiration of the term for which any subsettlement had been annulled, a new subsettlement shall be made under section 40, that is in accordance with the provisions of Act XXVI of 1866, the Oudh Subsettlement Act.

"The Committee have also inserted a clause in section 220 empowering the Chief Commissioner to determine the amount which may be retained by the Deputy Commissioner to defray the expenses of the recovery of arrears of rent under this section 158; and also empowering him to determine the extent to which an arrear of rent may be so recovered. It is not intended that applications for the recovery of an arrear of rent due for more than the year in which the application is made shall ordinarily be entertained under this section, but cases may occur when it may be found advisable to extend the period somewhat; such cases will be provided for by the rules issued under section 220.

"And this brings me to the only really important alteration that has been made in the Bill since the presentation of the Report in July last, namely, to chapter XII of the Bill now before the Council. The Council will remember that Sir Henry Davies said, when he presented the Report two months ago, that section 208 of the Bill then before the Council had been retained in it as originally drawn, but that some of its clauses were still under consideration. The clauses to which he referred were those which gave power to the Chief Commissioner to frame rules relating to the appointment, punishment and remuneration of the patwáris of all maháls, whether they were included in taluqás or not. The taluqdárs have from the first protested against these clauses, and have presented several memorials against them. They urge, among other objections, that the power of appointing their own patwáris was conferred on them in 1858, and that if this power is now transferred to the Chief Commissioner, they will be deprived of a privilege which they value highly, and which they have exercised ever since the annexation of Oudh. Their objections are very clearly and temperately stated in the last memorial submitted by them, which was forwarded to the Government of India by the Chief Commissioner in April last. This memorial is among the printed papers which have been circulated to the Members of the Council.

"The question has been very carefully considered lately, and it has been decided that it will be better to strike out of section 220—the section which gives the Chief Commissioner power to frame rules about various matters—all the clauses relating to patwáris, and to provide for their appointment, punishment and remuneration in the Bill itself. This has accordingly been done by sections 203 to 215, which now form chapter XII of the Bill before the Council. Section 203 gives the Chief Commissioner power to require the appointment of a patwári for any village or local area. Section 204 imposes on all landholders

the responsibility of nominating duly qualified persons to fill the office of patwárí, and section 205 empowers the Chief Commissioner to make rules for regulating the qualifications, enrolment and duties of patwáris. The next seven sections Nos. 206 to 212 contain provisions relating to the appointment, punishment, supervision and remuneration of patwáris generally.

"Then comes section 213, which declares that the provisions of sections 206—212 shall not by force of the Act only apply to taluqás, but that they may be made applicable if the Chief Commissioner finds it necessary to do so; then section 214 gives the Deputy Commissioner power to order the 'patwáris' papers required by the rules made under the Act to be prepared for any one year at the expense of any taluqdár who may fail to have them submitted at the prescribed time; and lastly section 215 provides that, on the request of any taluqdár, or if any taluqdár persistently and repeatedly fails to nominate persons to fill the office of patwárí, or to ensure the punctual and accurate performance by his nominees of the duties prescribed for them under this chapter, the Chief Commissioner may direct that all or any of the provisions contained in sections 206 to 212 shall be applied to the taluqá of the taluqdár making such request or default, or to any local area therein, for such term as he thinks fit: provided that, in the case of the taluqdár making such request, the term shall not exceed his life, and that, in the case of the taluqdár making such default, the term shall not exceed his life or fifteen years, whichever period first expires.

"Thus the privilege which the taluqdárs now possess of appointing their own patwáris is continued to them, but power is given to the Chief Commissioner to step in and take the necessary measures to ensure the appointment of efficient men, and the submission of correct returns and statements for their estates, whenever this may be rendered necessary by the neglect or contumacy of any taluqdár.

"I think that these sections do all that is wanted; and I feel certain that the taluqdárs will show that they deserve the confidence that has been placed in them; that they will appoint efficient men to be the patwáris of their estates; and that they will take the necessary measures to ensure that the returns and statements required from them are correctly prepared and punctually submitted.

Suggestions have lately been made that we should at once introduce into Oudh all the statements and returns that are now required from the patwáris of the North-Western Provinces. I have no hesitation in saying that we cannot do this at present; they enjoy in the North-Western Provinces in the matter of

patwáris and the returns required from them many advantages we have not in Oudh. In the North-Western Provinces the patwáris have been carefully and thoroughly trained and instructed in their duties by the Settlement officers under whom they have been employed during the progress of the revision of the assessments of the land-revenue now going on there,—the statements which the patwáris are there required to keep up have been in the first instance correctly prepared under the supervision of the Settlement officers, and the duty of the patwáris is, for the most part, merely to keep these returns up to date, by making in them the necessary corrections from time to time. In Oudh the case is altogether different: there the settlements have been completed some years ago—the patwáris are utterly ignorant and uninstructed: and most of the papers kept up in the North-Western Provinces will, if called for from Oudh, have to be prepared *de novo*. For these reasons I am certain that we must be contented, for the present at all events, with demanding from our patwáris the statements and accounts prescribed by the circulars issued by the Chief Commissioner in 1869 and 1872. These are amply sufficient for all practical purposes; if we try to get more we shall only harass and worry the people without the slightest chance of attaining our object; hereafter, when we have got these papers correctly prepared, when our patwáris have been thoroughly instructed in their duties, we may perhaps, if it is then thought necessary, take a step further in imitation of the North-Western Provinces.

"I do not think that any other alterations have been made by the Select Committee since July last which need be noticed. The Bill has now been before the Council for about four years; during that time it has been most thoroughly and carefully discussed by all parties interested in it; by the officers of Government as well as by the taluqdárs and other landholders of Oudh. The differences which existed as to some of its provisions, and which have been the cause of the delay in passing it, have been adjusted, and it is now the wish of every one connected with Oudh that it may become law as soon as possible. I hope therefore that the Council will consent to the motion I shall presently make, and by passing this Bill to-day give to Oudh the benefit of a short, clearly expressed, well arranged revenue law, in place of the confusion which now exists on that subject. The revenue law in force in Oudh at present is the revenue law of the North-Western Provinces, as it stood in 1858, subject to such alterations as may have been made in it by orders subsequently passed by the Government of India, and the circulars issued from time to time by various Chief Commissioners. The revenue law thus partially extended to Oudh is contained in more than 50 old Regulations and Acts. The earlier of

these Regulations were passed in 1793, originally for Bengal, and were afterwards extended at different times, either wholly or in part, with many modifications, to the ceded and conquered provinces. The difficulty of tracing the law backwards and forwards through all these old Regulations is in itself very great; but this difficulty has been materially enhanced in Oudh by the effect of the orders of Government and the circulars of the Chief Commissioners; and also by the fact that the taluqdárí settlement granted to Oudh by Lord Canning has introduced into that Province many tenures unknown in Bengal when the earlier Regulations were passed. The result is that it is almost, in fact I may say quite, impossible to ascertain with any degree of certainty what the law actually is on many important questions connected with the revenue administration of the Province. In the place of all these old Regulations and Acts, all these orders and circulars, all this uncertainty, I hope we shall now have a short, clearly expressed Act, in which all doubtful points, so far as they have been brought to the notice of the Select Committee, are cleared up and settled, and the boon to the people and the officers of the Government will be very great. Of course I do not mean to say that the Bill which I have now the honour to present to the Council is altogether perfect, or that it may not be found necessary, after it has been in operation a few years, to propose some alterations or amendments in it; for it is no easy task to consolidate into one short Act the provisions of so many old Regulations and Acts, overridden as they are on so many points by an unlimited number of orders and circulars; especially when they relate to so large a subject as the law applicable to the assessment and collection of the land-revenue, the preparation and maintenance of a correct record of rights in land, the partition of estates, and other matters coming within the scope of this Bill; but the Select Committee have taken very great trouble with it, and have done their best. They have moreover received much assistance from Mr. Currie, the Judicial Commissioner of Oudh, and from the Revenue Officers of that Province, who have all been constantly consulted while the Bill has been in progress, and whose opinions have received the most careful attention and consideration. The Select Committee have also to acknowledge the assistance they have received from the taluqdárs of Oudh, who have from the first taken a very active and intelligent interest in the Bill. Thus, as I just now said, the provisions of this Bill have been most thoroughly and carefully discussed during the last four years by all parties interested in it, and I can, without hesitation, commend it to the approval of the Council.

In conclusion, my Lord, I wish to take advantage of this opportunity to express, as Officiating Chief Commissioner of Oudh, my sense of the fairness and

liberality that have been shewn by the taluqdárs as a body in the discussion and settlement of the many important questions affecting their rights and interests that have been raised while this Bill has been before the Select Committee. I refer especially to my friend the Mahárájá of Balrámpur who is now a Member of this Council; to Rájá Amír Hussain Khán, the Vice-President of the Taluqdárs' Association; and also to the other taluqdárs who have come up to Simla to be present at the final discussion on it. I have now, my Lord, to move that the final Report of the Select Committee on the Bill be taken into consideration."

The Hon'ble THE MAHARAJA OF BALRAMPUR, speaking in Hindústání, said that the Oudh Land-Revenue Bill and the Oudh Laws Bill had been under consideration for the last four years. During this interval all those taluqdárs and others whom the provisions of these Bills concerned were given the opportunity to express their opinions. Consequently every section of these Bills was properly discussed and thoroughly considered, and the several points were properly determined by the Select Committee. In his opinion the legislation of these Bills was in reality an important one, for by their introduction many doubts had been removed. It was therefore his desire that the Bills might be passed by the Council.

The Motion was put and agreed to.

The Hon'ble MR. INGLIS also moved that the Bill as amended be passed.

His Excellency THE PRESIDENT said:—

"Before I put the question which has been moved by the Hon'ble Mr. Inglis, I wish to say a very few words in general reference to the subject of this Bill. It is not in my power to add any thing, nor is it necessary that I should attempt to add any thing, in the way of explanation, to the much that has been already written and spoken, and more especially to what we have heard to-day from the Hon'ble Member who moved that the Bill do now pass, respecting the details of this important measure, the circumstances which have rendered it necessary, or the numerous objects it is intended to effect. But the probable result of the motion, with which I shall conclude these remarks, is one upon which I desire to offer the sincere congratulations and grateful acknowledgments of the Government of India—in the first place, to those able and experienced administrators, Sir George Couper and Mr. Inglis, as also to the Judicial Commissioner in Oudh, Mr. Currie, who, by their valuable advice and energetic assistance, have enabled the Committee to bring this Bill to what we hope and believe to be a satisfactory completion;

and, in the next place, I wish to offer similar, and no less cordial, acknowledgments to the Mahárájá of Balrámpur, and to those influential Native Noblemen and Gentlemen of Oudh, whose intelligent co-operation and unprejudiced criticism have so greatly aided the Government of India in its endeavour to reconcile the reasonable interests of the taluqdárs with that degree of security which the State, in its supreme capacity, as the impartial guardian of all classes and interests, is bound to provide, not only for the collection of its own revenue, but also for the rights of subordinate holders, and the adequate protection of the actual cultivator of the soil.

"It is with special satisfaction that I notice that our deliberations to-day have taken place in the presence of some of those gentlemen, who so worthily represent the intelligence and loyalty of the taluqdárs of Oudh; because I am thereby afforded the opportunity of publicly vindicating, in their hearing, the character of this Government from a very serious accusation—and, I must say, I think a very odious accusation—which has been publicly preferred against it by a writer of considerable eminence and authority. In a recent work by him upon the Primitive Forms of Property, M. Emile de Laveleye, the distinguished Belgian Publicist, has recorded and criticised the course of Indian legislation in reference to land-tenures in Oudh.

"Now, no doubt that subject is a very complicated and difficult one; but, I fear, it cannot be said that M. de Laveleye has treated it with his usual care and candour; indeed, his statements on this subject appear to me to have been made under a total misconception, not only of the principles, but also of the plainest facts, of our Indian land legislation. Those statements, however, have so special a reference to the questions with which this Bill is concerned, that, before I refer to them more particularly in detail, it may, perhaps, be convenient to revert for a moment to the origin and object of the measure now before us

"The primary object of this Bill is, as we have heard from my hon'ble friend Mr. Inglis, to clarify the laws relating to land-revenue in Oudh, which have been obscured and confused by section 25 of the Indian Councils Act. That section declares to be law a great number of merely executive orders and regulations which were never intended to be law at all. Mr. Hobhouse gave us the other day the number of enactments which have been more or less applied in Oudh, subject to indefinite qualifications, by the executive order of February 1856; and, if I rightly recollect, it was no less than two hundred and

forty-seven. I gathered from his lucid analysis of the state of the law in Oudh, that it consisted, firstly, of the spirit of the Bengal Regulations modified by custom, secondly, of a few Acts of Council having special application to Oudh, and thirdly, of this mass of executive orders to which I have referred; and of which, I believe, it was said by a very eminent former Member of this Council (Sir Henry Maine), that he could rarely read one of them without being in doubt whether it was intended to convey a sarcasm, or to lay down a rule.

"Well, the present system of land-revenue in Oudh which this Bill, when passed, will materially modify and, we trust, greatly improve, was based on the Panjáb system, as that system existed in what I suppose I may call the pre-scientific era; that is to say, before it had been codified by Mr. Fitzjames Stephen and Mr. Egerton; and the Bill now before us was, I believe, when first introduced, drawn upon the lines of the Panjáb Act XXXIII of 1871.

"Since then it has, I need not say, been copiously recast in general accordance with the principles of the North-Western Provinces Act XIX of 1873. Now, it is quite unnecessary for me to follow this Bill through all its previous stages, to the final and definite form in which we hope to pass it to-day.

"The history of the Bill has been very ably sketched by Hon'ble Members, who not only on this, but on former occasions, have spoken on the subject of it; and, in listening to the exceedingly interesting account they have given us of the progress of this measure, I have often been reminded of a very curious and very extraordinary statement—(a statement almost as extraordinary as those of M. de Lavalaye)—by an old Greek writer, who seriously affirms it to be a fact in natural history, that the eagle habitually lays three eggs, sits upon two, and hatches only one. Now, however untrustworthy that statement may be in regard to the natural history of eagles, I think it is, at least, more or less applicable to the natural history of the legislative incubations and productions of a Government which, like this of India, has to legislate with careful reference to the most complex, the most curious, and the most delicate, diversities and varieties of difference in the fundamental social facts of the numerous dissimilar communities whose rights and interests are committed to its charge. In fact, the Indian legislature, in reference to subjects like the present, is obliged to deal with its Bills much in the same way as the eagle has been said to deal with her eggs; that is to say, the Bills finally brought into legal existence represent only the carefully selected residuum of numerous projects and principles which, in the meantime, have been sedulously tested and silently eliminated in Committee.

"I believe that the great difficulties with which the Committee have had to deal in framing the present Bill, have arisen out of the exceeding complexity of the relations of the population of Oudh, on the one hand to the soil, on the other hand to the State. That population is composed, broadly speaking, of three dissimilar, yet closely inter-related, classes. In the first place, there are the taluqdárs; then, there are the rest of the proprietors and the village communities; and lastly, there are the under-proprietors and other subordinate holders. The taluqdárs are directly responsible to Government for the payment of the land-revenue assessed on their estates; as are also the other proprietors and village communities; while the under-proprietors and subordinate holders pay the revenue assessed on their lands to a taluqdár, or some other superior proprietor, in addition to the share of the profits to which he is entitled. The Government of India therefore, in legislating on the subject of land-revenue in Oudh, has had to consider most carefully, not only the relative rights of the taluqdárs, superior proprietors, under-proprietors, and subordinate holders, but also the grounds on which those rights repose in ancient usage and custom, as well as the conditions whereby they should be regulated and defined in accordance with modern requirements. In fact, the task which the Government has had to undertake has been to reconcile, as far as possible, the vested rights and interests of the taluqdárs with the interests of the subordinate holders, the interests of the cultivator, the interests of the State, and the interests of the soil itself. Now, I should certainly have thought that a legislature, thus practically engaged in the conscientious endeavour to work out to a just solution one of the most perplexing—though, at the same time, one of the most interesting—problems in legislation, might have fairly and reasonably reckoned on receiving from a publicist so eminent as M. de Laveleye, should he deign to notice their labours—well, if not a sympathetic interest in the difficulty of those labours, at least a perfectly impartial recognition of their results. But I will now ask Hon'ble Members to allow me to read to them a few passages from the work by M. de Laveleye, to which I have referred; and if those passages are not already in the recollection of Hon'ble Members, I am sure they will hear them with considerable surprise.

"'In Oudh,' says M. de Laveleye, 'the British Government has considered the taluqdárs as the sole proprietors of the soil, *without any reserve whatever on behalf of the interests of the subordinate holders.*'

"And having thus concisely stated the assumed fact, he proceeds to enlarge upon it thus:

"During that period of anarchy which preceded the annexation of Oudh, the taluqdárs who were merely the ancient heads of clans, feudal seigneus, and collectors of imposts, *just*

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like the zamíndárs) usurped the position of independent proprietors; and, after the suppression of the last insurrection, the British Government *purchased their support* by recognizing them in that capacity.'

"M de Laveleye then adds, that although the Government instituted an enquiry into the question whether the ryots possessed any rights at all in connection with the soil they cultivated, yet they (the *ryots*) were *terrified* into answering that enquiry with a negative. And then, after having drawn this double indictment against the British Government for bribery and intimidation (bribery in our dealings with the taluqdárs—intimidation in our dealings with the ryots), M. de Laveleye continues:

"'In Oudh the State' (that is, of course, the British Government) '*has stipulated no guarantee whatever for the ryot.* This is a fault, and something more. It is a crime—the crime of high treason against humanity.'

"Well, now, what can one say of assertions like this, unless it be what Horace Walpole, I believe, said of a certain lady of his acquaintance. 'She has,' he said, 'as good a set of teeth as any woman can possibly have, who has only three teeth, and each of them black.'

"Is it too much to say of such a passage as this, that it is as full, candid, and accurate, as any passage can be which contains only three statements, and each of them false? M. de Laveleye is, I believe, a member of the Cobden Club; and, if so, he is certainly one of the most distinguished members of it; and I have no doubt whatever that to his numerous continental readers this circumstance will have been an all-sufficient guarantee for the accuracy of his statements upon the subject of Indian legislation. But, what are the facts? Now, I speak here in the presence of experienced Indian legislators. There is not a single Hon'ble Member sitting at this table who will not be able to correct me immediately if I am unwarranted in asserting, that in the whole history of our land legislation for Oudh, there has been no period at which the legislature of this Empire has ignored the existence of proprietary rights in the soil of that province, other than those of the taluqdárs; that at no period has it disregarded the interests of the subordinate holders of those rights; that at no period has it omitted to take elaborate precautions for the protection of the tenant and the ryot from any abuse of powers which, though recognized by our generosity, have always been restrained by our justice.

"I appeal to the records of our land legislation for Oudh, which I now hold in my hand.

"Act XXVI of 1866 is entirely and exclusively devoted to the affirmation and definition of the claims of subordinate proprietors in Oudh. Now, this Act was passed within ten years after the annexation of the Province of Oudh; but its very preamble attests the pre-existence of rules and regulations issued by the Government of India for—what are the words?—'*the better determination of claims by persons possessed of subordinate rights of property*' in Oudh.

"Again, I turn to Act XIX of 1868, and I find that Act to be one elaborate code of law for the maintenance of subordinate proprietary rights, and for the protection of tenants in Oudh. Section 5 of this Act defines the rights of occupancy, which include those of the ryot. Sections 22 to 26 secure to the tenants of Oudh the right of compensation for improvements. Chapter IV limits the maximum rates of rent; Chapter V strictly circumscribes the power of ejectment; and the same consistent tendency of our land legislation for Oudh is continued in this direction and carried on by the Bill which we hope to pass to-day. Section 25 of that Bill subjects to important exemptions the right to resume rent-free grants; and, again, section 135 reserves to the State comprehensive powers for the rescue and preservation of the interests of tenants whose land is sold for arrears of revenue.

"Now, I make no apology to Hon'ble Members for having inflicted upon their patience this reference to facts with which they are all thoroughly familiar; because I am sure they will feel that, on an occasion like the present, and as the Executive Head of the Government of India, I need make to the members of its legislature no excuse for endeavouring to refute the unfounded aspersions cast upon their policy by so distinguished a critic of it as M. de Lavalaye. And if, indeed, some echo of my words should reach beyond this room, I trust it may tend to confirm the taluqdárs of Oudh in that considerate recognition which, I am bound to say, they have given to the many and great difficulties involved in the task undertaken by this Government, and also to the impartial and conscientious spirit in which the Government has endeavoured to perform that task, in legislating upon a subject which materially concerns the interests of other classes in Oudh besides their own.

"I have now only to put the question before me; and the question is that the Bill, as amended, be passed."

The Motion was put and agreed to.

OUDH LAWS BILL.

The Hon'ble Mr. Hobhouse's motion that the Bill to declare what laws are in force in Oudh, as amended, be passed, was then put and agreed to.

The Council adjourned *sine die.*

SIMLA;
The 9th October 1876.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla—19 10-76

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 22nd November 1876.

PRESENT:

Major-General the Hon'ble Sir H. W. Norman, K. C. B., Senior Member of the Council of the Governor General of India, *presiding*.

His Honour the Lieutenant Governor of Bengal, K. C. S. I.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

The Hon'ble R. A. Dalyell.

The Hon'ble T. C. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rájá Narendra Krishna Bahádur.

The Hon'ble F. R. Cockerell.

SPECIFIC RELIEF BILL.

The Hon'ble MR. HOBHOUSE presented the report of the Select Committee on the Bill to define and amend the law relating to certain kinds of Specific Relief.

He said it was a Bill that did not deal with any very large principles, neither had the Committee made very numerous alterations in it, and perhaps no alteration would be generally considered as of great importance. At the same time it was a much more important Bill in the eyes of lawyers than in those of laymen; and as the publication of the Bill and the remarks made on its introduction had elicited some extremely valuable professional criticism, it would probably be expedient that he should now briefly state how the Committee had dealt with some of the main points in it.

He had explained to the Council, when he introduced the Bill, that the measure was intended to occupy a middle ground between the Contract Act on the one hand, and the Civil Procedure Code on the other, touching both but not encroaching upon either. The Contract Act laid down rules for regulating the

validity and nature of contracts; the Civil Procedure Code laid down rules which informed people how they were to get the remedies they were entitled to. The intention of this measure was to indicate the nature of the remedies, whether they should be by way of specific relief or by way of compensatory relief. Then it was pointed out to the Committee that they had not closely adhered to the language of the Contract Act, and inasmuch as the two Acts were intended to work into one another, that the use of different language was likely to lead to difficulty; and also that in two places the Bill encroached somewhat on the provisions of the Contract Act.

The first of these objections was met by altering the language of the Bill, and the Committee had adopted throughout, for the same subjects, similar language to that of the Contract Act, and they had provided, in section 3 of the new draft which he now laid before the Council, and which was labelled Bill No. II, that "all words occurring in this Act which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act." Therefore, he hoped there would be no conflict, when this Bill passed into law, between the two Acts, except as regarded two points in which the Committee had intentionally displaced provisions of the Contract Act.

One of these points was a matter of considerable legal importance. It related to the question whether there should be a general right to specific performance of contracts by which disputes were referred to arbitration. Some of the gentlemen who had been kind enough to favour the Committee with comments had stated that they saw no reason why there should not be specific performance of such contracts. There were, however, objections of considerable practical force. The two most ordinary forms of agreements to refer disputes to arbitration were, first, one which provided that the arbitrators should be appointed by the parties themselves, and, secondly, one which specified a particular individual as arbitrator. But how was the Court to make any effective decree if, in the first case, the parties would not name an arbitrator, or if, in either case, the arbitrator died or became incapable or refused to act? In order to make the decree effective, you must go a great deal further, and give the Courts powers which no Court of law now possessed. You must give them power to appoint arbitrators themselves, or themselves to sit as arbitrators. But that was not the specific performance of an agreement; it was making an entirely new agreement, which the parties had not entered into and never thought of entering into.

Now there were provisions in the Civil Procedure Code for the purpose of carrying into effect all those agreements for reference to arbitration

which really could be performed *in specie*. Those were cases in which the parties had named arbitrators who were able and willing to act, or cases in which the parties agreed to refer to any person who should be named by the Court. For the due performance of these contracts there was quite sufficient provision in the Civil Procedure Code. But if he (MR. HOBHOUSE) agreed to refer a claim to an arbitrator, say Mr. *A. B.*, it was because he had confidence in the skill, integrity, or force of character of Mr. *A. B.*; or if he agreed to refer to an arbitrator to be named by himself, it might be, and usually was, the case that he had somebody in his eye in whom he had confidence. Now, not to go into more refined considerations, but to take the simplest cases that could happen; suppose that an arbitrator named or in contemplation for some reason could not act, or died, or refused to act. It would be an exceedingly strong thing to say that his (MR. HOBHOUSE'S) agreement was to be converted into a totally new agreement, and that his affairs should be referred to another person in whom he had no confidence at all. Broad considerations of that kind had led the Court of Chancery to lay down a general rule that an agreement to refer to arbitration was not susceptible of specific performance.

When the Bill was drawn, it had escaped his notice that there was a provision in one of the sections of the Contract Act in which the Act went rather beyond its proper scope, and designated the species of remedy which was to be adopted for contracts of this class. In section 28 of the Contract Act, an exception was introduced to the general rule, which makes void such agreements as restrict the action of the ordinary tribunals. The exception was—

"This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred."

And then, within that exception there was a further provision which said that, when such a contract was made, a suit might be brought for specific performance:—

"And if a suit other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party, in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit."

Now that provision admitted of two constructions. According to one construction, in the case of every agreement which was referred to arbitration,

specific performance was the sole remedy either party could have; according to the other construction, it was the sole remedy in cases only of a certain class of such agreements.

The matter had been brought prominently to the notice of the Committee, owing to a recent decision of the High Court at Calcutta, in which the matter was very much discussed, first before Mr. Justice Phear, and afterwards before a Bench of Appeal. The High Court adopted the narrower of these two constructions, and they also affirmed the rule which MR. HOBHOUSE had mentioned as being the rule of the English Court of Chancery; and they expressed the extreme difficulty they felt in understanding whether, and how far, the Indian Contract Act intended to displace that rule. The matter had to be made clear one way or the other, and the Committee had thought the proper principle was that which was affirmed by the High Court, and which was the English principle, namely, that there should be no decree for the specific performance of an agreement to refer to arbitration. In those agreements which the Court could carry into effect, the parties had plenty of remedy under the Civil Procedure Code. In other cases, there would be no failure of justice. The original ground of dispute remained; the Courts were open; let them implead one another.

The Committee therefore proposed to repeal that one sentence of the Contract Act which dealt with this subject. In section 21 of their Bill No. II, they had provided that, except so far as the Code of Civil Procedure provided, no contract of this kind should be specifically enforced. And then they borrowed from the Contract Act a part of the repealed sentence, and declared that—

"if any person who has entered into such a contract and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit."

That was a kind of moral pressure to prevent people who had entered into contracts to refer to arbitration from breaking them wilfully and capriciously. But it left the other and innocent party entirely free to seek the remedy from which he had been apparently shut out by the provisions of the Contract Act.

The other point upon which they had come into conflict with the Contract Act was with respect to a contract to do some act which, in the meantime between the completion of the contract and its performance, had become impossible. The rule laid down in section 56 of the Contract Act was this:—

"A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful."

The greater part of that rule was obviously quite right. But if it meant that the whole of the contract should become void as against both parties, because some portion of the contract became impossible of performance—if it meant that, and he was not sure that it did—it effected an alteration of the law, and one which was not desirable. There must be some point of time at which the rights of parties in the process of exchanging one property against another became fixed, and in which each party took all risks affecting the property which he had to receive. Well, no time seemed so definite or proper as the time at which the contract was formally concluded. That was the English rule. When a contract was formally concluded each party was considered as the owner of the property he had to receive. They therefore restored that rule—he said restored, if it was intended to be displaced by the Contract Act, as to which he was not quite sure,—and they had provided that, notwithstanding anything which was contained in the Contract Act, the mere circumstance that some portion of the contract which was to be performed had become unperformable should not render the contract wholly impossible of performance. So that if he contracted to buy a piece of land, and that contract was concluded, but there was some delay in its performance, and during such delay the land was swept away into the sea by a flood, he must still perform his part of the contract, because the rights were fixed the moment the contract was concluded.

The next point he would mention was, that the Committee had struck out of the Bill a portion of that which was section 4 of the Bill as introduced. That was a provision that the rules of English law should not be applicable to the kinds of relief here provided for. Now when he introduced the Bill, he had explained at some length to the Council how very much the English law had been influenced by the circumstance of the double jurisdiction of law and equity as it existed there, and again by the provisions of the Statute of Frauds, in which respects Indian law materially differed from English law. The Committee had thought that, as there was so much difference between the two laws, it might be prudent to exclude the Courts from the consideration of English law. But they had been advised by two or three gentlemen whose opinions were entitled to great weight, that by doing so they would only embarrass the Judges. They said, it was quite certain that the English decisions must be and would be referred to for the purpose of illustrating some of the principles which were necessarily stated in very general terms in an Act like this; and if it was only for the purpose of finding out what was the law of justice, equity and good conscience, or such other general principle as the Court thought should govern the case, it was quite certain that the Judges

would have recourse to English decisions to guide them. Therefore it would be better, it was said, not to affect to do that which could not practically be done, but to be silent about the operation of English law. The Committee had felt the force of this argument and had struck the provision in question out of the Bill.

Another thing they had struck out was that matter which formed sub-section (*a*) of section 12 of the Bill as introduced. It was there provided that there might be specific performance of any contract in which it was specially agreed that either party might require it to be specifically performed. He mentioned at the time that this was, so far as his experience went, a perfectly novel provision, and that it had been borrowed from the New York Civil Code, and he also intimated that he thought it a rather speculative provision. They had now been advised by professional gentlemen of experience that it was not likely to work well. It was said that this particular stipulation would constantly be put into very inequitable bargains, and that though the Bill did not propose to compel the Court in such cases to give a decree for specific performance, such a decree being in all cases discretionary, yet that the existence of a provision of this kind would practically be treated by a great number of Judges as compulsory upon them. On the whole, the Committee thought it more prudent to strike out the provision.

The only other matter to which he would call the attention of the Council was that which was contained in section 42 of the Bill No. II, corresponding with section 40 of the Bill as introduced. It related to the subject of declaratory decrees. In the Bill as introduced, it was provided that there should be no declaratory decree in cases where the right of the plaintiff was a present existing right. In so doing, they had followed the English decisions without very much examining the grounds upon which they rested. They had received from the Standing Counsel a paper of very great value of which they had freely availed themselves in altering the Bill. Upon this point, he challenged them to show reason why they should so frame the law, and MR. HOBHOUSE confessed that he could not answer the challenge. He would read to the Council what Mr. Pitt Kennedy said:—

"It is generally of grave importance for every man to know precisely his pecuniary position, and serious difficulties might often be avoided if this could be accomplished. I confess myself unable to discover why, when others advance a claim to property which one believes to be his, whether in possession or not, he should not have the power of settling the point at the earliest period instead of being obliged to wait till his evidence may be lost, and to keep his arrangements for his family uncertain. The old rule was based, so far as I can discover, on the (possibly not unnatural) dislike of Judges to be troubled with the decision of a point

of difficulty if they could in any way avoid it. One singular illustration of the length to which this was carried is to be found in *Bull* v. *Pritchard*, in which the same will was construed as respects the personalty by Lord Giffard in 1826 (1 Russ. 213), and as regards free-holds by Sir J. Wigram twenty years afterwards, 5 Hare 567, with a precisely similar result."

Then Mr. Pitt Kennedy referred to one of the illustrations in the Bill, which supposed *A* to be in possession of land and *B* to be threatening him with litigation, and which proceeded on the theory that *A* would have no right to declaratory relief. And he continued thus:

"Illustration (*e*) does clearly illustrate the section, but why should *A* not have the power to quiet his title? The claim is a serious invasion of his rights, and would no doubt lower the selling value of his property; why should he not have the power of putting *B* to the alternative of renouncing or proving his claim, at the cost of *B*, if *B* had advanced it rashly or maliciously? Doubtless, this section does follow the decisions on the English Act and the Procedure Code, but this Bill is to amend as well as to define; and so far as I can discover, such powers would be no novelties in law; the Scotch action of declarator is, I believe, precisely pointed at such cases. In my own experience, I have known of great difficulties being imposed on a family by the existence of a supposed defect of title in a portion of the family property, which much complicated the testamentary arrangements of the father, and which could easily have been set at rest if effective powers analogous to the Scotch declarator had existed, though the doubt was quite insoluble for the time under English procedure."

Mr. Hobhouse could not answer Mr. Pitt Kennedy's argument, and he could add something to it from his own experience. When he was practising at the Chancery Bar, it not unfrequently happened that people desired to have some question settled for the purpose of family arrangements, and that there was extreme difficulty, sometimes insuperable, sometimes superable only by the exercise of great professional craft, in finding out how to get up an actual conflict of present rights, so as to compel the Court to decide the question at issue.

The Committee had therefore made an alteration in the Bill, bringing it more in accord with Scotch law than with English. In order to avoid multiplicity of actions and to prevent a man getting a declaration of right in one suit and immediately afterwards a remedy in another, they had provided that, if he was able to seek more substantial relief beyond a declaration, he should do so; but that the mere circumstance of his right being a present right should not prevent him from obtaining relief by way of declaration.

There were other alterations, all of which were mentioned in the Report of the Committee. They thought it right that the Bill should be re-published, so that any one might see for himself precisely how the Bill had been amended.

PRESIDENCY MAGISTRATES' BILL.

The Hon'ble MR. HOPE asked leave to postpone the presentation of the final Report of the Select Committee on the Bill to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency Towns.

Leave was granted.

OPIUM BILL.

The Hon'ble MR. HOPE presented the final Report of the Select Committee on the Bill to amend the law relating to Opium.

TREASURE-TROVE BILL.

The Hon'ble MR. BAYLEY moved for leave to introduce a Bill to amend the law relating to treasure-trove. He did not propose to detain the Council with any very full statement of the law which this Bill was designed to amend. He would, for the present, confine his remarks merely to explaining the necessity for some amendment of the law, and this he would do by stating, briefly, that in the first place the law as it now stood was in many parts of India very uncertain, and, secondly, that even where it was certain, it was quite ineffectual at least for any useful purpose. There were in existence two old Regulations, (V of 1817 and XI of 1832) one affecting the Bengal Presidency, and the other affecting the Madras Presidency. With regard to the Non-Regulation Provinces on the Bengal side, it was probable, though by no means certain, that the Bengal Regulation applied to them. In the course of discussion upon certain recent projects to define the substantive law in some of the Non-Regulation Provinces, this point was indicated as one which required determination in some way or other, and accordingly provision was made by legislating in the affirmative as respects several of those provinces. But, in the meantime, a correspondence was sent up by the Government of Bombay, which showed that there was no distinct enactment affecting that Presidency, and that it was extremely doubtful what law on the subject was there in force. Under these circumstances, he thought the Council would admit that, on the ground of the uncertainty of the law, there was at least a necessity for some legislative action in regard to the Presidency of Bombay, and possibly still as to one or two of the Non-Regulation districts of Bengal. But he would propose to go somewhat further, and to point out that the law, even where it was certain, was nevertheless ineffectual.

The object of the law, as it now stood in Madras and Bengal, was to define the rights in treasure-trove, and to protect what were supposed to be the rights of the State. He might say, roughly, that the purport of the law in this respect

was to assert the general right of the State, but to waive that right upon certain conditions in favour of the finder, where the property did not exceed the value of a lákh of rupees. As a matter of fact, he believed—he might perhaps say he was certain—that during his official experience in India, which now extended to above a third of a century, no single case had occurred of treasure-trove exceeding one lákh of rupees in value having ever been found—certainly no well-authenticated and ascertained case. And therefore the law had never brought one single rupee's worth of revenue to the Government Treasury.

But there nevertheless remained a kind of fear widely diffused that Government might claim any treasure-trove. Moreover claims were often made by another class of claimants whose not unreasonable rights the present law wholly ignored, but which the Bill would define and protect. The natural result of all this was that, dreading any adverse interference, the finder, as a rule, endeavoured to conceal the fact that he had found anything, and so, in many cases, articles of extreme value, both in an artistic and historic point of view, had been lost or defaced.

He thought, therefore, he might say that the law as it now stood was both ineffectual and mischievous. From what he had said, it might be gathered that it was his opinion that this defect in the law proceeded from an inherent error in the policy on which it was founded. When he said that this was his opinion, he meant that it was the opinion which was now accepted by the Government of India, and had also been accepted by the Secretary of State, to whom, for certain reasons, it was necessary to refer this project of law before introducing it into the Council.

If leave was given to introduce a Bill, he proposed, in doing so, fully to explain its details, and in connection with them to enter more fully into the policy which it was proposed to substitute for that which governed the existing law.

The Motion was put and agreed to.

SEA CUSTOMS BILL.

The Hon'ble Mr. Hope introduced the Bill to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India, and moved that it be referred to a Select Committee with instructions to report in three months. The present Act (VI of 1863) which regulated these matters had now been for thirteen years in operation, and it had already been found necessary to amend it by more than one special enactment. Numerous other

modifications had at various times been suggested, and although some of them had been of a rather pressing nature, it had not been found practicable to legislate specially on their account. Further, the immense revolution which had taken place in the conditions of modern trade, more especially arising from the opening of the Suez Canal, had so entirely altered the circumstances of the large ports, such as Bombay, Madras and Calcutta, as to render necessary radical changes in the Customs system which had hitherto prevailed, not only in India, but generally in all civilized countries where such changes had not taken place. The necessity for a new law was felt as long ago as 1870, and Sir Richard Temple, the present Lieutenant Governor of Bengal, in August 1870, obtained leave to introduce a Bill for the purpose. Certain difficulties connected with the English law arose, which it was not necessary for him at present to explain, and the Bill was for the time not proceeded with. It had now been found practicable to follow out the idea with which that leave was originally granted. But it had been thought better, instead of acting on the leave then given, to obtain fresh leave by means of publication, under the Rules, with the permission of the President, and to bring in an entirely new Bill.

This Bill which he had the honour to introduce was in the first place a consolidation of the whole existing law, and it was a careful consolidation so far as there had yet been time and opportunity to make it so. There were however a considerable number of modifications which he was sensible the Bill was capable of; some modifications of drafting, such as a consolidation of all the penal clauses into one section, and of all the clauses relating to confiscation into another, which there had not been time to elaborate, and there were also others of greater moment.

The Bill however did contain a few changes, which, being of some importance, he might perhaps refer to briefly. One of these was that, where a dispute arose regarding the proper rate of duty upon any goods, the goods might be taken away by the owner, under proper security, instead of being detained whilst the dispute was being settled. Another was designed to meet the difficulty which was felt every time a change was made in the tariff, owing to goods, which had been in some cases shipped, and in other cases contracted for, at certain rates inclusive of duty, being chargeable on arrival in India with other rates of duty. Every time that the Tariff Act had been changed, the Government had received applications, which, in some cases, it had been able to comply with, and in other cases it had by law been unable to do so. It was therefore now provided that, where a contract was entered into for the supply of goods at a fixed price including duty, and the duty had been altered, the contract-price should be

increased or diminished, as the case might be, by the amount by which the duty had been so raised or lowered. And further that, where the duty was raised during transit by sea to India, the duty payable on arrival should be the reduced duty which the shipper at the time of shipping the goods believed he would have to pay.

The next change was in order to facilitate the rapid discharge of canal-steamers. It was to allow of the entry in the manifest of the name of the ship's agent as consignee of any cargo, so that the whole cargo might be turned out within forty-eight hours of the arrival of the steamer, or whatever time the discharge might occupy, before the real consignees had had time to apply for delivery, for which the vessel was now, strictly speaking, obliged to wait.

Another change in the same direction, for facility of discharge, was the provision to permit bulk to be broken prior to the receipt of the original manifest and entry of the vessel at the Custom-house. Very often the papers of a ship were not fully completed when the ship sailed, and did not arrive until after she had reached her destination. As the law now stood, in such a case the ship might be subjected to detention and inconvenience pending the arrival of the papers.

Another alteration with the view of facilitating trade, was the permission to grant port-clearance before delivery of the manifest. It was frequently found impossible to complete the manifest of a large vessel as soon as the vessel was ready to sail, and so long as security was given that the papers would be delivered within three days of the departure of the vessel, there appeared to be no objection to the grant of the port-clearance.

Again, it was proposed to legalize the practice existing at some Custom-houses, which was exceedingly convenient to traders, of allowing merchants to deposit Government paper, against which might be debited, in a current account, the different items of duty payable by them, instead of obliging them to make separate payments in cash for every individual package they might require to clear, which was a course equally inconvenient to the public and to the Customs Department itself.

One other improvement of sufficient importance to notice here was that, when goods were adjudged to be confiscated, the owner might, at the discretion of the confiscating officer, be allowed the option of paying a fine and taking away the goods; because, in many cases, as long as the owner was subjected to a sufficient penalty, there was no reason for depriving him of the articles themselves.

He hoped the Bill as now introduced was, so far as it went, a considerable improvement upon the existing law He confidently anticipated that it would receive very large further amendments both in principle and in wording, with the assistance, not only of the Select Committee, but also of the Committee which, at the desire of the Lieutenant Governor, had been convened in Calcutta, and of Committees which it had been suggested to the Governments of Madras and Bombay to convene also He, for his own part, should be only too happy to consider favourably every suggestion for the purpose of facilitating trade and adapting the law to the present circumstances of the country which was consistent with the safety of the revenue and the necessity for due registration and keeping of trade-statistics

The Motion was put and agreed to

The Hon'ble Mr HOBHOUSE moved that the Hon'ble Mr Dalyell be added to the Select Committees on the following Bills —

To define and amend the law relating to certain kinds of Specific Relief

For the better control of dramatic performances

To amend the Indian Registration Act, 1871.

The Motion was put and agreed to.

The following Select Committee was named —

On the Bill to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India——The Hon'ble Messrs Hobhouse, Dalyell, Cowie and Bullen Smith and the Mover.

The Council adjourned to Wednesday the 29th November 1876

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department

CALCUTTA,
The 22nd November 1876

Government Central Press—No 236 L D—30-11-76—230

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 29th November 1876.

PRESENT:

Major-General the Hon'ble Sir H. W. Norman, K.C.B., Senior Member of the Council of the Governor General of India, *presiding*.

The Hon'ble Arthur Hobhouse, Q.C.

The Hon'ble E. C. Bayley, C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

The Hon'ble R. A. Dalyell.

The Hon'ble T. C. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rájá Narendra Krishna Bahádur.

The Hon'ble F. R. Cockerell.

OPIUM BILL.

The Hon'ble MR. HOPE moved that the Reports of the Select Committee on the Bill to amend the law relating to Opium be taken into consideration. He said that he very much regretted that his hon'ble friend, Sir William Muir, should have been unable to carry through the Council this Bill, to which he attached considerable importance, and in which he took great interest, and that it should have devolved on him (MR. HOPE) at what was almost later than the eleventh hour. He was, however, in a position to state that Sir William Muir approved of the Bill as it now stood in every respect, and had left on record, for MR. HOPE's use if necessary, his special approval of one or two provisions in it which had been more or less the subject of dispute, and especially of those in reference to warehouses, to which MR. HOPE would refer presently.

The report of the Select Committee only mentioned three or four amendments which had been made in the Bill since the previous Report of the Committee had been laid before the Council, and those were not of a very important character. In explanation of the amendment which was noticed in the second paragraph of the Report, that the definition of "Magistrate" had been extended so as to allow Magistrates of the second class, when specially em-

powered by the Local Government, to try cases under the Act, he would say that that had not been done with the view of indicating an opinion that Magistrates of the second class, generally, ought to decide opium cases, but merely to meet special cases, such as that of some large districts in British Burma, which contained about 15,000 square miles, and which had Magistrates of the first class scattered over them at very long distances, so that the restrictions which were considered generally suitable in other parts of India would, in the places referred to, have an oppressive effect, and would involve people being sometimes taken enormous distances in petty cases. One of the other amendments which had been made was in favour of the merchants, for the Committee had given power to redeem confiscated opium on the payment of a suitable fine, instead of providing that the owner should be deprived of his goods in every case. On the other hand, the Committee had secured the confiscation of the opium where the person charged with smuggling it might not happen to be convicted.

There were, however, certain objections made from without, which, as Sir William Muir was not here, MR. HOPE would refer to in rather more detail. They related to the seventh section of the Bill, on the subject of warehousing. The effect of that section was to give power to the Local Government, with the sanction of the Governor General in Council, to authorize the establishment of warehouses for the warehousing of opium, either before or after payment of duty. The question, he might say, in one sense, was an executive one, which, in the first instance, had been decided by the Government of India; but as their decision would not preclude the Legislative Council, as such, from doing their duty by going into it, and from expressing their opinion if it happened to be unfavourable, the subject was still one for consideration on the present occasion. These objections arose from Messrs. Sassoon & Co., of Bombay, who were owners of large Docks, from the Bombay Chamber of Commerce, and from certain merchants interested in the opium-trade. He ventured to think that his Bombay friends, in raising these objections, were suffering under several misconceptions.

In the first place, they were under a misconception which, perhaps, all Bombay people were liable to fall into, and that was, they were liable to forget that Bombay was not the whole of India. A measure of this kind, which was intended to secure the opium-revenue throughout India, must necessarily contain provisions which were suited to the different circumstances of that revenue in all the different provinces. And, when it was borne in mind that in some cases opium which was grown in foreign States—as, for

instance, Rájputána—had to pass through the Central Provinces, which were British territory, then through the Bírárs, which were under the Resident at Haidarábád, after that, across the Nizám's dominions, and finally through a long stretch of the Madras Presidency, before reaching the coast and being shipped to China; or, again, that opium which was grown under a free license-system in the Panjáb, had to traverse Sindh before being exported at Karáchi; or that opium grown under the monopoly-system in Bengal might be smuggled through foreign territories into other parts of British India, where a different system prevailed,—when, MR. HOPE said, they bore in mind all these different peculiarities, it would be seen that it must be necessary to insert in a Bill of this description provisions which, although they might be required in one part of India, there need be no present intention of applying to another. In that view, the operation of this section had been made purely permissive.

There was also another misconception, which had already officially been corrected by the Government of India, but had not been swept away from the minds of the Bombay objectors, that the revenue which it was desired to protect was merely a China revenue; whereas, in reality, it was mainly a revenue from home-consumption. It would not be desirable, or proper, that he should enter in this place into an explanation of all the various methods in which the revenue from internal consumption might be injured under the present system, or that he should lay before the Council all the different and most ingenious frauds which were at present practised. He ventured to say that the objectors were, some of them, quite as well versed in those methods as himself, or rather, that they were probably much better acquainted with them. But he would mention one fact as a proof that a necessity did exist for some remedial measures; that in the island of Bombay itself, the sum which was paid by licensees for the privilege of selling opium, which they were bound to obtain from the Government stores, together with their expenses, very largely exceeded the entire value of the opium which they took out of the Government stores to sell; so that they would obviously be in a state of bankruptcy, if it were not for the peculiar shifts they had for carrying on the trade, and making a handsome profit. Further, this revenue from home-consumption was not by any means small, as was alleged, but was a large item even now, and might be much larger, if better means were taken to protect it.

Another of the objections taken was that these warehouses would be obstructive to trade. It was said that it would be impossible to carry on business if the opium was kept in a warehouse which was opened at 10 o'clock in the morning and closed at 5; and that, "as things go now, the merchants work in their own godowns from 6 A. M. to 10 P. M.,

including Sundays, before the China Mail starts, as the purchases are then compressed into the three or four days preceding the departure of the Mail." He need hardly say that the Select Committee had not provided in the Bill that the officer of any Government warehouse, who ventured to keep open his warehouse after 5 o'clock P. M. and opened it before 10 o'clock A. M. should be subject to six months' imprisonment and a fine of one thousand rupees. It was obvious that the Government and the Custom-house authorities would make whatever regulations might be necessary for the proper and convenient working of warehouses. It was also said that it would be impossible in Government warehouses to secure the secrecy which it was necessary to observe in the sorting, mixing, dealing in, and re-packing of the different kinds of opium. For himself, he could not understand how any secrecy as to what was legitimate was likely to be interfered with in the Government warehouses. It might be possible that there might be some operations which it was more advantageous to the merchant, than to the Government revenue, to carry on with secrecy; but with regard to such, he could not express any sympathy with the difficulties that might be felt. Otherwise, it was hard to see how the warehousing of opium could be, in any measure, an obstruction to the legitimate manipulation of the article, any more than in the case of spirits and wine in the London docks, where it was well known that every kind of admixture of wines, and selling and tasting went on every day without any injury or complaint.

Besides this, there was what he might term a personal and local aspect of these objections. It was stated that "Messrs. Sassoon, being the largest exporters of opium, are naturally anxious to prevent such a Bill as this from passing, as the concession to export opium from their dock, which has been recently granted them after a long struggle with the Government, will be at once cancelled if the Opium Act should be permitted to apply to Bombay." And, again, "the fact is that the opium must, under the new arrangement, be deposited in the warehouses of the Port Trust, and rent charged for the storing of it; in other words, a new source of income to the Port Trust will be created." Now here MR. HOPE ventured to think that his friends in Bombay had got hold of a mare's nest. It ought not to be necessary to assure them that there was really no snake lurking in the grassy pastures of the Government of India; and they had undoubtedly, to quote a phrase which, from its associations, ought to have a soothing effect upon their protestant feelings, "got the *wrong* sow by the ear." The Government of India, which had recently, in fairness to Messrs. Sassson & Co., required the abandonment of Port Trust revenue which amounted to some Rs. 40,000 a year and was likely to increase, really did not deserve to be viewed with such suspicion. Besides, it might occur to many, and to

Messrs. Sassoon especially, firstly, that there was nothing in the Act to prevent more than one warehouse being established at any place, and, secondly, that, if only one warehouse was to be established, it was in the highest degree probable that it would be located where the largest amount of opium was shipped, which in Bombay was, according to Messrs. Sassoon, their own dock.

Again, objections were made on the general ground that the Government should not interfere with any article when the duty had once been paid upon it, and that "every ounce of the opium warehoused in Bombay has already paid duty in Malwa, and so it is difficult to see how the revenue can possibly suffer." In another place, it was said that the Chamber of Commerce is justified in protesting against "the principle the Act would establish, that the Government have a right to interfere with the disposal of merchandise after the duty on it has been paid. The novelty of the principle sought to be established is too injurious to trade to be permitted to pass without every effort being used to upset it altogether; but when it is put forward in support of such a concern as the Bombay Port Trust, it is scarcely possible to discuss the subject with ordinary calmness." Now, with reference to that it might be said, in the first place, that the Government was perfectly justified in taking whatever measures might be necessary for the protection of its revenue; and the question of what particular stage of the transit of the article the duty might happen to be levied at, was quite irrelevant to the main question. But besides that, he would point out that the duty which was levied upon opium was a duty expressly levied upon opium intended for China, and not for consumption in the country. Therefore, if the duty was levied upon the express understanding that the opium was going to China, and at a rate based on that understanding, the Government was perfectly justified in taking measures to see that the opium *did* go to China, instead of being diverted to home-consumption in parts of India where, as in Bombay, it would naturally need, and be subject to, a different course of restriction. He thought he might very well dismiss this matter by reading the answer which had been given by the Government to the memorialists on this occasion. It had been said by the Government of India in the Financial Department, in reply to the Chamber of Commerce—

"I am directed to state that the Hon'ble the President in Council regrets that he is unable to modify the decision conveyed in my letter No. 3052, dated 26th September last, and to say that the establishment of Government warehouses for opium is intended principally for the protection of the revenue from the home-consumption of opium. I am also to request that you will remind the Chamber again that the proposed legislation is only permissive, and is not designed to apply to Bombay in particular. It will not be applied to Bombay as long as other measures are found sufficient. Warehouses may be established in any part of India in which they may appear necessary, but only with the sanction of the Government of India.

'With regard to the alternative proposals of the Chamber, I am desired to say that the Hon'ble the President in Council is unable to approve the suggestion that the provisions relating to Government warehouses shall be applicable only to opium on which duty has not been paid, and that all warehouses now and previously used, and proved to be suitable for the opium trade, shall be entitled to be licensed.

"Nor can it be stated in the Act that the 'fees for warehousing' shall not exceed the cost of warehousing the drug at present; but I am to explain that it is not intended that the Government should derive a profit from the rent of the opium warehouses.

"As regards the two remaining proposals, I am to say that every facility will be afforded for the conduct of business in the Government warehouses, which is afforded in other bonded warehouses, or which the peculiarities of the trade may be shown to require."

That reply, MR. HOPE ventured to think, was as complete as it was possible to supply, and ought to be satisfactory to those who felt reasonable doubts about the measure.

With regard to the Bill in general, he need not trouble the Council with any more remarks, except that he himself personally had some doubt as to whether the provisions of section 15, with regard to the arrest of persons who were suspected of offences, would prove sufficient, and that he should have preferred a rather more stringent provision, similar to that in the Bombay Salt Act and the Inland Customs Act also. However, he hoped that the present section, which the Committee thought would be sufficient for the purpose, might be found on trial to verify the view which they had taken.

The Hon'ble MR. DALYELL said that he must express his regret that, owing to his absence from the Council for the last eighteen months, he had been unable to take any part in the discussions on this Bill. He felt this the more as he found, on reference to the papers which had been printed in connection with the Bill, that one of the main objects of the measure, as it had been originally introduced, was to remedy the absence of all repressive legislation with regard to opium in the Madras Presidency—a state of affairs which had been said to lead to practices equally injurious both to the public revenue, and to public morality and health. He was aware that, for many years past, all the best authorities on revenue matters in the Presidency had been of opinion that the consumption of drugs in Madras was so very insignificant that any legislation on the subject was altogether unnecessary, if not mischievous, as being likely to lead to oppression; but of late it had been found that the consumption of intoxicating drugs had increased, and that the extension of trade, and the increased facilities for transport afforded by the construction of railways, had led to a considerable quantity of opium passing into Madras from

Northern India, either for local consumption, or for the purpose of being exported without the payment of duty. It was also within his own knowledge that within the past few years there had been several cases of attempts to defraud the opium-revenue detected by the Customs Authorities at Madras, and also that a very much larger number of cases had escaped their vigilance, owing to their being compelled to proceed under the ordinary Customs law, instead of being able to put into force the powers of the Opium laws which were in force in other parts of India. Indeed, he believed it had been stated that, if the quantity of opium which yearly passed into the Madras Presidency were diverted to the China trade, it would pay a duty of upwards of six and a half lákhs of rupees. He could very well believe that a very considerable portion of this quantity was being surreptitiously exported by sea, and thus did actually entail a direct loss to the imperial revenue from opium. Under these circumstances it was quite clear that legislation of some sort was necessary; and the Madras Government was so sensible of this necessity, that some time back they had brought into the local Council a Bill for the purpose of controlling the possession and exportation of opium. But no doubt it was always desirable that fiscal legislation should, as far as possible, be of an imperial character; and therefore the Bill now before this Council would probably be preferable to a local enactment, provided that it met local needs.

So far as he had been able to judge of the probable results of the different provisions of the Bill now under consideration, he was disposed to think that it was likely to meet the requirements of the case as to most matters; but he must confess that there was one section in regard to which he had some considerable doubts. He alluded to the tenth section of the Bill; and it would perhaps be as well that he should explain to the Council how his attention had been drawn to the provisions of that section. When he had received the final copy of the Bill, as approved by the Select Committee, a few days ago, it had come to his recollection that Mr. Hunter-Blair, the Collector of Customs at Madras, the only official who had had an opportunity of becoming practically acquainted with the difficulties connected with the detection and suppression of opium frauds in the present state of the law, had recently returned from leave; and MR. DALYELL had thought it advisable to enquire from him by telegraph whether the Bill met the wants of his Department. In reply, he had informed MR. DALYELL, that in his opinion the penalties prescribed by section 10 of the Bill would altogether fail to prevent opium smuggling on the Madras coast, as, in consequence of the high rate of duty charged on the drug, opium smugglers made such large profits that they would be able to laugh at a fine of Rs. 1,000, and as it would always be difficult to induce the Magistrates to punish the principals with

imprisonment, though they might be inclined to imprison the persons who were actually engaged in illicit exportation.

The Council would see that the penalties prescribed were, first, imprisonment for a term not exceeding one year, or a fine which might extend to Rs. 1,000, or both. Well, with reference to Mr. Hunter-Blair's opinion, that these penalties might prove inadequate for the purposes of the Bill, MR. DALYELL noticed that it was proposed, under the Bill, to replace all the penal clauses of the existing Bombay law, of the law in Lower Bengal, of the North-Western Provinces, and of the Panjáb by the penal sections of this Bill. If the Council would turn to the schedule attached to the Bill, they would see that it was proposed that the provisions of Acts XI of 1849 and XXI of 1856, so far as they related to opium, were to be repealed. These two enactments referred, one to the town of Calcutta, and the other to the up-country districts of Lower Bengal; and the penalties prescribed in both of them for the illicit possession of opium were proportioned to the quantity of opium in possession, and were therefore considerably more stringent than the pecuniary penalty provided in the present Bill. It was also provided that the sections in the recently enacted Excise Law of 1871, which referred to opium, should be repealed, and the penalties prescribed in that Act were precisely similar to those of the Bengal Acts. Further, as the Bill provided a special punishment for the exportation of opium in contravention of the rules prescribed, the general Customs law, under which any person convicted of smuggling was liable to a penalty equal to three times the value of the opium smuggled, would no longer apply; so that, while the smuggler of any other commodity, if the goods were worth, say, Rs. 2,000, would be liable to be mulcted in the sum of Rs. 6,000, the smuggler of opium of that value would only be liable to a fine of Rs. 1,000, as the pecuniary penalty of his fraud on the revenue. It was true that the Bill as it had originally stood, and as approved by the Financial Department, contained no provision of the kind he desired to see in the present Bill; and it might therefore be fairly concluded that the Financial Department was satisfied that the stringency of the Customs law, so far as opium was concerned, might be somewhat relaxed. He had, moreover, been informed by his hon'ble friend Mr. Hope, that the matter had been fully considered by the Select Committee, and that they were of opinion that the provision giving the Magistrate the option of awarding imprisonment as an alternative punishment, or in addition to the fine, counterbalanced the reduction of the pecuniary penalty; yet MR. DALYELL confessed that he had some doubts as to whether it would be found possible to induce Magistrates to award imprisonment for offences against a fiscal law, especially when they had the option of imposing so large a fine as Rs. 1,000 for each offence.

He must not allow it to be supposed that he wished to throw any difficulty in the way of the passing of the Bill. He had been informed that there were urgent reasons why no avoidable delay should take place in the passing of it into law; and if the Council was not prepared, at this stage of the Bill, to alter the provisions relating to pecuniary penalties—that was to say, to give the Magistrates power to impose a fine with reference to the quantity of opium smuggled; and he believed it was quite within the power of the Council to adopt that course when the report of the Select Committee was under consideration—he should not press any objection to the passing of the Bill, especially as any enactment of the kind would be a considerable improvement on the present state of matters in the Madras Presidency. Moreover, as the Customs Act was under revision, the opportunity might be taken of re-enacting the penal clauses with regard to the exportation of opium, if penalties provided in the present Bill were found, on trial, not to have the desired effect.

He trusted that the remarks which he had felt called upon to make would not induce the Council to believe that he was in favour of making the fiscal laws of the Empire more stringent than was absolutely necessary for duly collecting, and properly protecting, the State revenue. He held no such view; but he had felt that, as an official who for a very long series of years had been connected with the revenue administration of the country, he should fail in his duty if he did not let the Council know that, in his humble judgment, there would be some risk in reducing even the pecuniary penalty for the offence of smuggling opium below the same penalty for smuggling any other article of merchandise, especially when it was remembered that, owing to the very high duty placed upon the drug, and to its very portable character, it offered special inducements to the smuggler, and afforded him peculiar facilities for carrying on his operations.

The Hon'ble Mr. Hobhouse wished to make one or two remarks respecting the penalties which were imposed by the Bill before the Council. He laboured under a little disadvantage because so many extraneous noises found their way into that room—human voices, rumblings of wheels, and some mysterious squeaking, which, he hoped, proceeded from an inanimate object—that he had lost some of his Hon'ble friends' remarks. He thought however that he had heard enough to enable him to say something to the point.

With regard to section 10, which was observed upon by his hon'ble friend Mr. Dalyell, he wished to say that it had been in the form in which it now stood ever since the Bill was introduced into the Council by Sir William Muir, and it was settled by him deliberately in that form. The adverse opinion

which had been received now had arrived very late. After so many months of publication and discussion, it would be inconvenient, to say the least of it, if at the last moment an opinion was sent up, and the Council was expected to give the same attention to it, as if it were sent in to the Select Committee months before. In point of fact however the matter was brought before the Select Committee, and the decision of the Committee was to abide by the plan devised by Sir William Muir, and principally upon the grounds stated by his friend, Mr. Dalyell.

Now he (Mr. Hobhouse) confessed that there was a great deal of force in what his hon'ble friend said, and his contention was illustrated by a case which had recently happened in Madras. The case was of this kind. A merchant residing in Ceylon had a warehouse and an agency in Madras. He was convicted of smuggling opium, that is to say, the Customs officer thought it was proved against him; and for the purpose of testing the law, we must assume that it was proved against him. His offence was that he used his agency in Madras as a base upon which to carry on smuggling operations from India into Ceylon. The nature of the operations was supposed to be this. A ship sailed from Madras, and some distance out at sea boats came off to it with opium in them. The opium was taken on board, and was carried on to Ceylon. Now there were some general powers given by the Customs Act to Customs officers to inflict fines upon all persons contravening the law; and the Madras officer considered that, under these general powers, he could inflict a fine upon this gentleman in Ceylon, and he did inflict a fine, and proceeded to realize the fine against the property which was in Madras. However, the Madras Court thought that the Madras officer had no jurisdiction to inflict the fine, and they even thought that it was so absurd to suppose that he had such a jurisdiction, that he could not have made the order in good faith, and they awarded large damages against him for malicious and wrongful proceedings against the property of the gentleman in Ceylon.

It seemed to Mr. Hobhouse that this ought to be remedied; that it was a monstrous thing that a person residing in a neighbouring country should use our country as his base of smuggling operations; and that we should not be able to attach his property for the recovery of a fine imposed on him. If there was no law for fining a man guilty of such an offence, and for attaching his property within our jurisdiction, there ought to be such a law; and as the penalty of imprisonment would have no terrors to a man residing in Ceylon, it might be necessary in such cases to inflict a large penalty, and to make the penalty recoverable against goods of his in this country.

Now it so happened that the Council were revising the Customs Act. It was the Customs Act under which the Madras case and the legal difficulty arose. The Customs Act had a wider range than the opium law, and we should have to consider that question in connection with the Customs Act. It seemed to him the wiser plan to let the present Bill pass into law, and to reconsider the whole question when the Customs Act was in the hands of the Committee, and when it came again before the Council. More advice might be taken upon the subject. At present nobody seemed to have been dissatisfied with the alteration of the law proposed by Sir William Muir until now; but no doubt a different turn was given to the question by what had happened. It would however be easy, if it was found desirable, to inflict a larger penalty under the Customs Act than what was provided in this Bill, and it would be easy to say in the Customs Act that that provision should apply to opium.

With regard to section 15, Mr. Hope said that he was dissatisfied that power was not given to the Police to arrest persons suspected of committing offences against the law. The broad issue before the Committee was this. Should they give power to the Police to arrest any person they had reason to believe guilty of any offence against this particular law or any other opium law, or should they confine their power of arrest to those cases in which there was a *primâ facie* case against a man because of his being in possession of opium? The Committee thought it was too large a power to give the Police, to say that they might arrest any man at any time wherever he might be found, and whatever he might be doing, because they suspected him to be guilty of an offence against the opium law at any other time and any other place. It was, in other words, to give almost unrestrained powers of arrest to the Police. The Committee thought it wiser and more prudent to confine the discretionary power of the Police to detention for the sole purpose of search, and if they found their man in possession of opium, they might then arrest him.

There was only one other point he wished to mention, and that related to the abetment of offences. The Bill said nothing about abetment, and it had been the subject of some observations; in fact, one Magistrate had written to say that, in his part of the country, smuggling really proceeded from substantial and responsible persons, but that those who acted directly in the smuggling were men of straw, whom it was hardly worth while to punish, and who certainly could not pay a fine; and he asked why we did not make abetment an offence. The reason was that it was already a punishable offence under the general law. It was quite true that under the Penal Code of 1860 abetment was not punishable when the principal offence was committed under a special or local

law; but that was amended many years ago—in 1870, if he recollected rightly—and now abetment was an offence, although the principal offence might be committed under a special or local law. If therefore any Magistrate felt a difficulty about punishing those who instigated or abetted smuggling, he would find his difficulty removed by referring to Act XXVII of 1870.

The Hon'ble MR. HOPE had only a very few words to trouble the Council with, in reply to the observations which had been made upon the Bill. He had heard with great satisfaction the remarks of his hon'ble friend Mr. Dalyell, who belonged to the Madras Presidency, admitting that the amount of smuggling which took place there was very large, because the period was not at all remote when the Madras Government itself expressed a totally different opinion, and it had for a long series of years stated that there was no necessity whatever for any legislation on the subject.

With reference to the point regarding penalties, to which exception had been taken, he might explain that, under the old law, in Bombay or in other parts of India, there was no imprisonment for the offence of smuggling opium; but, on the other hand, there was a fixed fine, which the Magistrate had not power to modify. In Bombay, if the offender was convicted, the Magistrate was obliged to fine to the extent of twice the amount of the duty, *plus* twice the value of the opium; and the law elsewhere was analogous. Representations were received from various parts of India—from Burma, Bombay and elsewhere—that this provision was totally insufficient, and that it was absolutely necessary that the Magistrates should possess the power of imprisonment, in order that they might inflict punishment upon the higher persons who usually kept in the background as abettors, although, in reality, they were principals, and were the merchants who benefited by the trade. The Bill which was brought forward by Sir William Muir combined both methods, and here MR. HOPE must point out a slight inaccuracy into which both his hon'ble friends had unwittingly fallen. The Bill as introduced *did* contain, in section 6, in addition to the fine of Rs. 1,000 and imprisonment for six months, a clause to this effect: "Provided that, if the opium in respect of which such offence is committed exceeds the weight of twenty sers, the fine may be increased at a rate not exceeding fifty rupees the ser for all the opium so found in excess." So that, had that clause remained in the Bill (and it was a clause which the Council received from the Financial Department), the objection of the Hon'ble Mr. Dalyell would no doubt not have been made. But this clause had been fully considered in Committee at one of the earliest meetings which took place, and after full discussion it had been struck out of the Bill for the very reason which

the Hon'ble Member brought forward as a good one for keeping it in. The argument which was then used was this, that if it was difficult to induce the Magistrates to punish principals with imprisonment (and this the Hon'ble Member said it was), it would be more difficult to induce them to punish principals with imprisonment if there was the alternative of a very high fine, and it would be next to impossible to get them so to punish if that high fine were compulsory. That that clause was struck out, he himself had at the time regretted. But he had since considered the matter, and he had come over to the views of his colleagues who advocated the striking out, because there seemed to him to be very great force in the argument he had stated.

As to the contrast which had been drawn between the Customs law and the Opium law, it was true that there was a heavier pecuniary penalty under the Customs law, than there would be under the new Opium law; but, on the other hand, there was no imprisonment under the former, but there was under the latter. If we were to believe all that the local officers reported on the subject, people were likely to care more for imprisonment than they at present cared for the infliction of a heavy fine; so that, in point of fact, it would appear that, so far from the punishment, as a whole, which could be awarded, being reduced, it had been very materially enhanced. All that we could do was to trust to the Magistrates to do their duty. If the Government found that the Magistrates generally would not punish the principals in these cases, the only course open to them was the simple one, which they were obliged to pursue in ordinary cases, namely, that of, in the first place, cautioning the Magistrates, and then, if necessary, removing them from their appointments, and he knew one instance in which an official so high as a District Judge had been removed from his appointment for not having adequately dealt with a particular case. As to the powers of the Police, he need not say more than that the matter would be tested by experience. But he was not able to see why, if the powers he recommended were not too large in the case of the smuggling of salt and sugar, they should be considered too large in cases under this Bill. Opium was much more easily smuggled than the one or the other, and likewise was of very much more value.

The Motion was put and agreed to.

The Hon'ble Mr. Hope then moved that the Bill as amended be passed.

The Hon'ble Sir Alexander Arbuthnot wished, before the question was put, to say one or two words by way of supplement to the observations which had been made by his hon'ble friend Mr. Hope with reference to the tenth section of the Bill. It seemed to him that there was one point which had not

been adverted to, but which ought to be borne in mind; that in all these matters the legislature was bound to assume that the Magistrates—especially the Magistrates who were likely to sit on the Bench in the Presidency Towns, the places where such offences were most liable to be committed—were men who, the Council were bound to assume, would exercise a reasonable discretion, and that, in regard to cases where a large quantity of opium had been smuggled or attempted to be smuggled, and where the fine that might be imposed under this section would obviously be insufficient as a punishment to the most guilty party, they were bound to assume that, where the legislature had given the option of adjudging a description of punishment which would be perfectly adequate, and which would be felt to be a very severe penalty, the Magistrate would exercise a reasonable discretion and would impose a sufficient and not an insufficient penalty.

The Motion was put and agreed to.

BURMA FOREST BILL.

The Hon'ble Mr. Hope also moved for leave to introduce a Bill to consolidate and amend the law relating to the management and preservation of Government forests in the province of British Burma. In doing so, he wished to explain very briefly the necessity for making this motion. He might premise that the province of Burma was, as compared with other parts of India, in a peculiar position, and that the whole of the specifically unalienated forest-land was the property of Government, subject only to certain rights of user, or privileges, exercised in some parts by individuals or village-communities. This right had been proclaimed at the time of the annexation of the various territories which now formed the Province of British Burma, and had never been gainsaid. The history of the previous legislation in regard to the forest-lands was this: In 1865, when the general Government Forest Act was passed, certain rules were made under it for Burma, which did not apply to the whole of the forests there, and it was eventually found that in part they were not covered by the Act itself. It therefore became necessary to pass an Act in 1869 to validate them. Subsequently, Act XIII of 1873 was passed to amend the law relating to timber floated and imported from foreign territory into British Burma, and that Act repealed Act VII of 1869, and partly also Act XXX of 1854. Later on, in 1874, the duty on foreign timber was made *ad valorem*, and finally, in 1875, further rules were made, under the Act of 1865, for the forests which had not been included in the old rules.

However, the whole had been at best but a piecemeal process, and legislation was still required upon five principal points, besides a number of small

ones. First, it was necessary to clear up doubts regarding the reservation of trees other than teak. The system of recovering a part of the price of Government timber in the form of a duty also had to be provided for. But perhaps the most important subject for which legal provisions were found necessary, was the enquiry into, and decision of, claims of persons to the various rights of servitude and user in the Government forests. It was likewise essential to bar the acquisition by prescription of new rights in reserved forests ; otherwise, a man who had, unknown to the authorities, been doing a particular thing for a number of years, would become vested with a right which might be injurious to the revenue. Finally, the penalties provided by the present law were found to be totally insufficient.

The Motion was put and agreed to.

DRAMATIC PERFORMANCES BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill for the better control of dramatic performances.

INDIAN REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the Indian Registration Act, 1871.

Leave was granted.

TREASURE-TROVE BILL.

The Hon'ble MR. BAYLEY introduced the Bill to amend the law relating to Treasure-trove, and moved that it be referred to a Select Committee with instructions to report in two months. When he obtained leave to introduce the Bill he said that it would possibly be necessary for him to detain the Council on the present occasion for some time to explain the nature of the existing law, the policy which regulated it, and the reasons for which it was proposed to substitute another, and he hoped a better, policy. He would therefore take the opportunity of giving an explanation on these points. He was afraid, however, he must go back somewhat to first principles, and to enable him to do so briefly, he should ask leave to read a few extracts from a well-known book, the Commentaries of the learned American Jurist Kent, which would enable him to place the matter in a clear light before the Council.

All systems of law recognized the means of acquiring personal property by what was called "occupancy," that was to say, by simply taking possession. Kent said that—

"though priority of occupancy was the foundation of the right of property in the primitive ages, and though some of the ancient institutions contemplated the right of occupancy as

standing on broad ground, yet in the progress of society this original right was made to yield to the stronger claims of order and tranquillity. Title by occupancy is become almost extinct under civilized Governments, and it is permitted to exist only in those few special cases in which it may be consistent with the public welfare."

It was the case still, no doubt, that if a person, on ground to which nobody had a claim, found any article for the first time which had never before been the property of any other human being, he was at liberty to convert it to his own use, and as there could not in such a case be any rights adverse to his, the property vested in him. But as a matter of fact, there were very few places and very few instances where other rights had not been, during the progress of civilization, created and defined by special provisions of law. Although, therefore, it might be said that, if a man found an article to which nobody else had or ever had had any claim, it was his and he might do with it what he liked, yet such instances were extremely rare. What was far more usual was, that a person found something which had become in some way or other the subject of property previously; that was to say, that some one else had in some way acquired some sort of right to it.

Now the subject of this Bill, which was technically called "Treasure-trove," belonged to the latter class. One of the old Regulations, to which MR. BAYLEY alluded last time as still in force in certain parts of India, described it as "hidden treasure, consisting of gold or silver coin, or bullion, or of precious stones or other valuable property, which may be found buried in the earth, or otherwise concealed within any part of the territory subject to this presidency," &c. That was to say, it was valuable property in which some one else had, at some time or other, acquired already some sort of right. All systems of municipal law did, it might be said, at least in theory, provide for the perpetual devolution in some way or other of rights of property once acquired, and the rights of the owner in such property were in almost every conceivable case fenced round with penalties. Any person, therefore, who either dishonestly or ignorantly neglected, as not unfrequently happened, the distinction between the two kinds of finding—between the finding, that is, of articles which never had been, and of those which already had been, the subject of property—was apt to find himself in very awkward contact with the provisions of the criminal law.

Of course, under these circumstances the first object of any law on the subject of treasure-trove must be to provide for tracing out the history of previous rights, and such a provision would accordingly be found in the present Bill. But there was considerable difference in the circumstances of various cases; for, although in theory such rights of property might be supposed always to exist,

even if temporarily in abeyance, in the articles which formed treasure-trove, yet in a very large number of cases it was practically impossible, either to discover who the previous owner of the property had been, or on whom in the course of years the right of property which primarily existed in such articles had devolved.

Of course, these rights might sometimes be proved, and very extraordinary instances had occurred of such rights being capable of substantiation after very long periods of time. MR. BAYLEY could recollect a case himself in which a gentleman, who was then a midshipman in the Navy, lost certain particular property in the wreck of the *Royal George*, and who was able to recognize and to recover it fifty years later; and there were no doubt instances in which the persons originally owning property, or their representatives, had been able to establish distinctly their right to it, though it had passed out of their actual possession for a much longer time than fifty years. But, on the other hand, there were other cases in which it was practically impossible to trace the original owner or his representatives. Three cases came the other day to his (MR. BAYLEY'S) knowledge in which it was morally certain that the property (in one instance of considerable value) had passed from the rightful owner's possession at least eighteen hundred years ago. Under such circumstances it was of course useless to attempt to trace original rights of property. The Bill therefore, while prescribing a procedure for discovering, where possible, the original owners of treasure-trove, or their representatives, proposed to confine it to property of which there was not good presumptive evidence, either in the nature of the property itself or otherwise, that it had been concealed or lost for more than a hundred years. The term of a hundred years was no doubt a purely arbitrary limit, and might be considered in Committee; but he imagined that, as a matter of fact, there were very few cases of property in which it would be possible in India to make any successful investigation, or to gain any trustworthy information as to the original owners or their existing representatives, where it had been lost or concealed for more than a hundred years. Of course, if any persons could substantiate their right to property, the law would restore it to them. But it might be said that any such rights with regard to treasure-trove could only in occasional instances be established, and practically the cases for which the proposed law had mainly to provide were those in which all trace of the original owners was lost, or in which it was impossible to trace their representatives, and the task which the Council had before them was to regulate the devolution of the right of property in such cases.

He would now again, with the permission of the Council, refer to *Kent's Commentaries*, and would read a passage in which the author described the policy which had ruled various systems of law on the subject of treasure-trove.

Mr. Kent said—

"The common law, originally, according to Lord Coke, left treasure-trove to the person who deposited it, or, upon his omission to claim it, to the finder. The idea of deriving any revenue from such a source has become wholly delusive and idle. Such treasures, according to Grotius, naturally belong to the finder; but the laws and jurisprudence of the Middle Ages ordained otherwise. The Hebrews gave it to the owner of the ground wherein it was found; and it is now the custom in Germany, France, Spain, Denmark and England, to give lost treasure to the Prince or his grantee; and such a rule, says Grotius, may now pass for the law of Nations. The rule of the Emperor Hadrian, as adopted by Justinian, was more equitable, for it gave the property of treasure-trove to the finder if it was found on his own lands; but if it was fortuitously found in the ground of another, the half of the treasure went to the proprietor of the soil, and the other half to the finder; the French and Louisianan Codes have adopted the same rule."

Mr. Bayley said, at the last meeting of the Council, that the principle which the existing Indian law, so far as there was any law, had adopted, was practically that of the Middle Ages. It might be said to assume the right of the State, but to waive it on certain conditions and within certain limits in favour of the finder. He thought that, on broad principles of equity, that principle might very fairly be defended. Where no prior claim could be proved, it was at least a fair contention that property of any value so found should pass to the public treasury, and be used for the purposes of the general community. The real objection to adopting this principle was, that in practice it could not be enforced, and as in the case of all other laws which could not be enforced, it became not only useless, but mischievous and demoralizing. He did not mean to assert that the real reason of the provisions of the Indian law, or of the English law from which it was mutated, showed that it actually was founded on this principle. He believed, as a matter of history, that it was founded rather on feudal ideas which it was unnecessary here to discuss. The principle which the present Bill proposed to adopt was that, practically, of the old Roman law of the Emperor Hadrian, and of the French and Louisianan Codes, and to a certain extent also, as he should presently explain, of the law as it now stood (for it had been not very long since altered) in Denmark. The Bill proposed to give the property in treasure-trove to the finder, provided only that he would follow the very simple procedure which the law would require, for securing a hearing of the possible claims of other persons. The only deduction in his rights which would take place under this law would be that in favour of the owner of the ground on which the property might be found. It was perhaps not quite so easy to defend the natural equity of this provision, because treasure-trove could hardly be called any part of the soil in or on which it was found. But at

the same time there was no doubt that, if a man knew that there was a likelihood of finding treasure on his land, he had the power of preventing any body else from coming on the land and from searching for the treasure; and, what was still more important, as a matter of fact, where such rights or *quasi* rights were wholly ignored, they were always, nevertheless, very usually put forward, and attempts made to enforce them more or less irregularly in some way or another by the owner of the soil.

It was expedient, as a matter of convenience, therefore, to give to the owner of the soil in which treasure was found some concession; and the Bill provided for giving one-fourth of the treasure found to the owner of the soil, and the remainder to the finder.

The Bill further proposed to adopt one other provision which, as indicated before, was taken from the modern law of Denmark. This was to give the Government a claim, on the payment of a specified percentage in excess of the intrinsic value, to the possession of such articles as it should consider worthy of preservation in the interests of the public, as being of historic or artistic interest. This provision was inserted some years ago in the law of Denmark, and the practical result had been to make the Government collection of national antiquities in that country the finest now existing. In India such a provision would be of the very greatest value. There was much hidden treasure in India, and as he (MR. BAYLEY) could say from personal knowledge, much was being perpetually brought to light in various parts of the country, and a very large proportion of it was of importance, as illustrating either the history, the social habits, the religious beliefs, or the artistic skill, of the races who inhabited the country in past times. In truth, most of the only trustworthy information which we possessed of the history of India antecedent to the Muhammadan invasion was furnished by articles, especially by coins, discovered as "treasure-trove."

It was therefore an object to prevent articles of this kind from being lost or destroyed, and the provision the Bill proposed to make was, he believed, sufficiently liberal to secure to the Government an opportunity of purchasing such articles as they might consider of real public interest. Indeed, the present Lieutenant Governor of the Panjáb, Sir Henry Davies, had recently acted on this principle in a very important case, with the consent of the finder, and had preserved from destruction articles of extreme historic interest.

He had nothing more to say as to the principle of the Bill. He admitted that the Bill in its present shape was little more than tentative, and by the courtesy of the Consuls for Denmark and the Netherlands, he hoped shortly to

receive copies of the laws which prevailed in their respective countries, and from these and from other sources of information, he hoped to lay before the Select Committee materials from which he trusted they would be able to make the Bill in its final shape worthy of the Indian Statute-book, which already deserved so high a place in the systems of modern legislation.

The Motion was put and agreed to.

INDIAN SEA CUSTOMS BILL.

The Hon'ble MR. HOPE moved that the Hon'ble Mr. Cockerell be added to the Select Committee on the Bill to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India.

In making this motion, he would remark that at the time he proposed the Committee on this Bill, he perhaps had more in his mind the number of members in Committee, and the technical nature of the duty, than the Presidential aspect of the question; and he then thought that, with his hon'ble friend Mr. Dalyell, who was a colleague of his on the Tariff Committee last year, to represent Government, and the two members of the Calcutta mercantile community, and with, of course, the hon'ble Mr. Hobhouse, a Committee of five would be constituted in which questions would be thoroughly considered, and decided, if necessary, by a casting vote. But His Honour the Lieutenant Governor, immediately after the appointment of the Committee, had reminded him that, considering the very large interests of the Government of Bengal in the customs and trade of the country, it would be desirable to appoint also the member of Council who might be said to represent that province. He need hardly say that His Honour's suggestion met with his entire concurrence, and he had therefore much pleasure in making the motion.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to amend the law relating to Treasure-trove—The Hon'ble Messrs. Hobhouse, Dalyell and Hope, the Hon'ble Rájá Narendra Krishna, and the Hon'ble Mr. Cockerell and the Mover.

The Council adjourned to Wednesday, the 6th December 1876.

CALCUTTA,
The 29th November 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department.

Government Central Press.—No. 259 L D 8-12 76.—230

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 6th December 1876.

PRESENT:

Major-General the Hon'ble Sir H. W. Norman, K. C. B., Senior Member of the Council of the Governor General of India, *presiding*.

His Honour the Lieutenant Governor of Bengal, K. C. S. I.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

The Hon'ble R. A. Dalyell.

The Hon'ble T. C. Hope.

The Hon'ble Rájá Narendra Krishna Bahádur.

The Hon'ble F. R. Cockerell.

DRAMATIC PERFORMANCES BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill for the better control of dramatic performances be taken into consideration. He said, in submitting this report to the Council, he did not conceive it to be necessary to restate the general considerations which induced the Governor General to publish an Ordinance on the subject in the early part of this year, and which induced the Council to accept the present measure and to send it into Committee. It was true that from certain quarters, principally Native gentlemen, whose opinions he always listened to with the greatest respect, they had received some expressions of opinion adverse to any legislation at all on the subject. It was also true, at least in his judgment, that the Council should not refuse to reconsider the principle of any measure merely because that principle was affirmed when the Bill was referred to a Select Committee, for the reason that upon many subjects they did not enjoy the advantage of thorough public discussion until after the Bill had been introduced and published. If therefore any new considerations were brought forward, shewing that a Bill which in the first instance appeared to be desirable was not desirable, it seemed to him that the Council ought to give full weight to them, and not rely upon what was a very convenient rule amongst

themselves, namely, that the principle of a Bill was affirmed when they sent it into Committee.

Now they had received representations from certain inhabitants of Lucknow, and again from the well-known British Indian Association. The former document was a brief one. It gave no reasons for the objections which its framers entertained to the principle of the Bill, but it contained some observations upon particular parts of the Bill which were well worthy of attention. The paper which was sent in by the British Indian Association argued at length against the whole principle of the Bill, and he thought it a very temperate, clear, and able statement of their side of the case. At the same time he did not find in that paper any general considerations which were not fully present to the minds of the Council when this Bill was sent into Committee.

The Association relied very strongly upon the sufficiency of the Penal Code to punish any representations which were defamatory or scandalous or seditious or obscene. But they did not address themselves to that argument which was the ground-work of the Bill, namely, that there were many cases in which prevention was worth all the punishment in the world. That was particularly true in times of excitement, and in cases where the play was of a seditious character. If the performance took place a few times, the mischief was done, and it was a poor satisfaction to punish the offenders afterwards. It was also particularly true when the object of the play was defamation. He should like to ask any one of those gentlemen which of the two alternatives he would prefer; whether he would prefer to be held up in the most vivid way to the scorn and hatred of the public and then to have his assailant punished, or whether he would prefer to have the whole exhibition prevented? In which case would he think that the law had most effectually protected him? which course would leave him the happier and more contented man? MR. HOBHOUSE thought he knew what answer would be given by any body who had not a foregone theory to maintain.

In the remaining case of obscenity it would seem that even for the purpose of punishment the Penal Code had been found to be insufficient. The section of the Code which bore upon their subject, that was, the subject of words sung or spoken, was section 294, and it ran thus:—

"Whoever sings, recites or utters, in or near any public place, any obscene song, ballad, or words to the annoyance of others, shall be punished....."

and so forth.

Upon that the Advocate General of Madras had written as follows:—

"The Bill is, I think, needed. We had a year or two ago here an extremely obscene play being acted, which was greatly affected by students, &c., the managers of which the Government dared not prosecute, because there was no evidence that the obscenity was 'to the annoyance of others,' so as to bring the performance within section 294 of the Indian Penal Code."

The other arguments put forward by the Association were of a very general character. They dwelt much upon the value of liberty, and upon the danger of stifling a rising national literature. But all law was, to the extent to which it operated, a restraint on liberty. The question to be argued in each case was, whether it was desirable in the interests of the public to restrain individual freedom to do particular acts. The Government said that in this case it was desirable; that the punitive law failed in effect; that preventive powers were necessary; and they gave instances to prove that. Those gentlemen who said it was not desirable to pass such a law as this, should make out that it was not desirable to suppress such a play as the *Nil Darpan*; that it was not desirable to suppress such a play as the *Cháka Darpan*; that it would not be desirable to suppress a play whose object was to gratify feelings of resentment against a private gentleman, because he did what was a perfectly lawful, innocent and honourable thing to do, but was opposed to the sentiments of his caste.

MR. HOBHOUSE therefore thought he might let the general merits of this Bill stand upon the arguments which he adduced when he moved for leave to introduce it. All the Members of Council had in their hands the arguments which had been adduced against it, and they had also a valuable Minute by his hon'ble friend the Lieutenant Governor, from which he should have taken the liberty of quoting one or two sentences, only that the Lieutenant Governor was there himself, and was able to say more effectually than MR. HOBHOUSE could what his sentiments were.

He might also add upon this point, that all the Local Governments had approved of the general principle of this Bill, excepting those who told the Council that in their Provinces that class of performances which had called for the action of the Council did not exist.

But though he could not accede to the general line of argument which their friends had put forward against the principle of the measure, the papers he had referred to contained some valuable criticisms upon portions of the Bill, and accordingly the Committee had made some modifications in the Bill as introduced. He would explain to the Council what they were.

The first, and in his opinion the most important, observation which had been made related to the places in which performances might be carried on. It was pointed out that as the Bill was framed there was nothing to restrict it to public performances, and that there might be interference with a purely private entertainment given by a gentleman to his own friends. They of course never intended such interference, but the Committee thought the criticism was a just one, and that there was a blot in the Bill. Therefore, in section 3 it was provided that the plays which might be prohibited were those which were to be performed in a public place. By a public place they did not mean merely such places as were public from their position—such as the maidan here—but they had expressly provided that a building in which money was taken at the door to witness a performance was a public place within the meaning of the Act.

Another thing pointed out to them was that there were certain religious ceremonies which might not commend themselves to the ideas of propriety entertained in Western Europe. Well, he believed that there were such religious ceremonies, exceedingly ancient, which had prevailed more or less among all nations at different times, and which still prevailed in parts of India. They did not intend to interfere with them, and accordingly they had said at the end of the Bill, that nothing in this Act should apply to any *jātras* or performances of a like kind at religious festivals. He was sorry that he was very ignorant on this subject, but he was told that "jātra" was a name given in Bengal, and in some parts of Northern India, to performances of the kind he had alluded to; that the name did not prevail in other parts of India, but that there were similar performances which the Committee had tried to indicate by the words they had used. Whether they had used the right words or not, it was for the Council now to determine on considering the Report. The matter had been very carefully discussed between those members of the Committee who had that knowledge of the subject which MR. HOBHOUSE had not, namely, by his hon'ble friends Mr. Cockerell, Mr. Dalyell and Rájá Narendra Krishna, and these were the words which had been ultimately decided on.

The third thing pointed out to the Committee was that in section 3 as originally framed, one of the sub-sections, that which was headed (*d*), was dangerously vague. It ran thus:—after saying that the Local Government might prohibit performances of certain specific characters, it went on to say that it might prohibit those which were "otherwise prejudicial to the interests of the public." Now the case was put to the Committee thus: if a play is scandalous or defamatory, or seditious, or likely to deprave or corrupt,

the Bill effectually strikes at it: but if it is none of these things, in what respect can it be prejudicial to the interests of the public? The Committee found on consideration that that was an exceedingly difficult question to answer. He supposed it was not the wish of any member of this Council to give to the officers who would work this Act a general power of prohibiting any play they might dislike, but rather to make those officers reflect and consider whether they could assign specific objections to a play. They therefore struck out these general words, and provided that the play must fall within one or other of the predicaments specified in the prior sections.

There was another sub-section of section 3 which was retained in the Bill—sub-section (c)—the words of which were—"likely to deprave and corrupt persons present at the performance." This had been objected to, not by Native gentlemen alone, but by at least one European officer, as also being too vague. It was said that they did not specify by what standard of morals or manners the likelihood of depravation or corruption was to be judged. Well, that was an important consideration. No doubt the standard of morals and manners varied, and it would not do to apply a too rigid standard to persons accustomed to a lax one. But if they were to retain the power of striking at the thing—and he thought hardly anybody desired that we ought not to strike at the thing—if they were to retain the power of prohibiting that which was likely to deprave and corrupt, he thought it impossible to use words which were better suited to the purpose. The Committee had tried a good many times, but could not find any words which were so apt. The fact was, that these words did not set up any absolute or ideal standard of decency or purity. They said that, in order to be prohibited, a play should be such as was "likely to deprave or corrupt persons present at the performance," and that necessitated the consideration, who the persons were, and whether they were likely to be depraved or corrupted. Of course it might be said, and was said, that we were foreigners, accustomed to a different standard, and however much we might try to judge people by their own standard, we were likely to err. It might be so; but those were considerations which were applicable to a great many other things we did, and this particular liability to error was one of those incidents which are absolutely inseparable from our presence here as rulers and administrators of this country. After all it seemed to MR. HOBHOUSE by no means an unmixed disadvantage, if in matters such as these—matters of taste, decency and purity—there was now and again a higher standard applied to those who were accustomed only to a lower one.

The Committee had therefore thought it was desirable to retain the words of sub-section (*c*), and the Council would remember how very much more

definite and specific they were than the similar law which prevailed in England. He had informed them on a previous occasion, that in England a single officer was empowered to prohibit the acting of any play, even though it had been already put upon the stage, whenever he should be of opinion that it was fitting for the preservation of good manners, decorum, or the preservation of the public peace. The expressions "good manners" and "decorum" certainly were infinitely vaguer than any expression which was to be found in this Bill.

But even on this point the Committee had taken some precautions. Of course the great security, both for the efficient working of a Bill like this, and for its working without oppressiveness, was to commit it to efficient and responsible hands. As the Bill was framed, the prohibitive order, which lay at the bottom of the whole Bill, and was the pivot upon which the machinery turned, might be made either by the Local Government or such officer as the Local Government might generally or specially empower. That took in a wide range of officials. The Committee thought it desirable, in view of the arguments presented to them, to confine the making of the prohibitive order to an official of greater experience and responsibility than any office[illegible]ight be empowered to make it. Therefore, as sections 2 and 3 now st[illegible] combined force the prohibitive order must be made in the Presiden[illegible] and in Rangoon which was a town of the same nature as the Presidency to[illegible] by the Local Government itself; and elsewhere it must be made only by suc[illegible] District Magistrates as the Local Government might expressly empower to make it. For instance, taking Bengal, within Calcutta it was the Lieutenant Governor himself who must make the prohibitive order, and in the mufassal it was such a District Magistrate as the Lieutenant Governor might think worthy of being entrusted with such powers.

Another matter upon which a good deal was urged would be found in the fifth section of the Bill, sub-section (*c*). It related to spectators who were present at a prohibited performance. As the Bill originally stood, spectators were put upon the same footing with the performers and the proprietor of the place. The Committee were told that this might bear very hardly upon spectators, who might be ignorant of the prohibition and be present quite innocently at the prohibited performance, and then find themselves guilty of a crime. A great many of their correspondents had urged them to strike spectators wholly out of the Bill. On the other hand, it was said that spectators might come in wilful defiance of an order of Government, and might be the most dangerous part of that objectionable thing which the Government desired to put down. The Committee thought therefore that it was not desirable to

leave spectators wholly out of the purview of the Bill, but that it was desirable to put them on a different footing from performers and proprietors. Accordingly they had provided that spectators might be punished if guilty of wilful disobedience to an order of prohibition. A case of open defiance would be well known to the Government, and it would be easy to make the order known, and then the spectators would be in much the same position as those who were members of a mob after the reading of the Riot Act in England. There was no reason why such persons should not be punished for disobedience to the law.

The Council would see that the Committee had taken great precautions to prevent the working of this Act in an unduly restrictive or oppressive manner, and that they had endeavoured to make it more definite, more narrow, and more specific than it was when it was introduced. He thought there was only one point on which the scope of the Act was at all enlarged, and that was the subject of section 7. It merely gave the Local Government power to make such enquiries as might suffice to inform it of the nature of a play before deciding whether or no to prohibit it. And he did not suppose that the worst enemy of the Bill would wish to deprive the Government of such a power as that: it was in fact one of the safeguards for a judicious working of the Act.

He thought there was no other point in the Bill to mention now. But he might state that the Council had received certain requests for delay, not at the eleventh but at the twelfth hour. One came to his hands at 4 o'clock yesterday afternoon; it came from a gentleman, a member of the Bar, whom it would always be a pleasure to him to see under any circumstances, whether on business or otherwise. He said that he was Counsel for the proprietors of the National Theatre, and that they desired time to consider the Bill, and if necessary to be heard through himself upon the subject. Another memorial reached MR. HOBHOUSE's hands a little later, and that came from a Committee appointed by some Native inhabitants of Calcutta in public meeting assembled. It prayed that the measure be withdrawn, or if that were impossible, that the measure be restricted in its operation to the Presidency towns, with such modifications as were indicated in the memorial; or that the memorialists might be "heard by delegate at the bar of this hon'ble Council or in Select Committee, as might appear fit and proper". There was again another memorial which was dated 6th December, and was put into his hands about half an hour ago. That was from the Committee of the Indian Association, who said that they only recently learned that it was the intention of the Legislature to pass this Bill

to-day, and that they desired some delay in order that the matter might be further considered.

It was no doubt very desirable that any body of gentlemen entertaining opinions on public matters should be allowed to express those opinions, and every encouragement was given to them to do so. But it was also very desirable that the public business should be done, and there must be an end to all things; there was a time when discussion must end and action must be taken. Now this Bill had been published for fully eight months; it had attracted a great deal of attention; Committees had been appointed for the purpose of criticizing it, and it had been extensively criticized. This very Committee of the inhabitants of Calcutta, whose memorial he had referred to, said that they were formed on the 4th of April last for the purpose of watching the Bill, and on the 5th of December, late in the day, they had sent in a memorial against it. Now it seemed to MR. HOBHOUSE that unless some important novelty had been introduced into the Bill since its publication, or unless there was something very new and striking brought to the notice of the Council by the memorialists, the Council ought not to delay their action. He had read the memorial presented by this Committee of the inhabitants of Calcutta, and he could not find in it anything of the slightest importance which had not been already said, and better said, by the British Indian Association. There was no new suggestion of detail, and there was nothing in the general arguments but what the Select Committee had already had before them. It seemed to him therefore, that if they were to delay their proceedings, and disturb the course of business and create that confusion which always occurred when things were brought to the birth and not born, that the Council would encourage those persons who were opposed to Bills to delay action until the last moment, and then to send in petitions and memorials praying for more delay, possibly in the hope that something in the chapter of accidents might occur to prevent the passing of the measure altogether. Therefore, though he thought it his duty to mention to the Council what had reached his hands, yet if they would take his advice, they would not delay their action. The matter however was entirely in the hands of Hon'ble Members to do what they pleased.

The Hon'ble RÁJÁ NARENDRA KRISHNA said that, with reference to what he had remarked on a former occasion when this Bill was under discussion in Council, he would observe that it was a wise measure which aimed at checking the growth of a dangerous evil in the shape of public performances of obscene dramas—a powerful agency in the speedy demoralization of the national character. This Bill, as it was originally framed, had certain

objectionable features which had now been removed, and as it now stood, he believed it would successfully strike at the root of the evil, and guard against the remedy in any shape proving injurious. Doubts which might have arisen as to the construction of the words "public place" had now been set at rest by a clear definition of the term; the apprehension which might have been entertained as to the vesting of the power of punishing a breach of the new law had to a very great extent been removed by providing that, in the Mufassal, only a district Magistrate would have the jurisdiction to try the offences made punishable under the proposed enactment, inasmuch as the word "Magistrate" was defined to mean the chief Magisterial officer of the district—an officer who, before he reached that high position, must have acquired a good deal of experience and a knowledge of the people, so as to be a very qualified person to exercise jurisdiction under the Act without causing any dissatisfaction to the parties concerned. A provision had been very properly made that ignorant and other spectators, instead of being taken by surprise, should be served with a notice to quit the place where an obscene play was being performed before they would be liable to any penalty. Lastly, to remove all possible objections to the measure, he would suggest that a competent Native official should be associated with the District Magistrate for the trial of such cases, as these dramas were composed in the vernacular language, and that *jātras* should be allowed to be performed on all occasions, both private and religious.

The Hon'ble MR. COCKERELL said that he wished to say a few words on the subject of this Bill, and chiefly in reference to what had fallen from his Hon'ble friend Rájá Narendra Krishna. In the first place, he was very glad that that gentleman, who might be fairly represented as the exponent of the feelings and opinions in a question of this kind, of a very large section of the best-informed Natives of Bengal, was so far in favour of the Bill that he thought legislation in this direction desirable, and that the measure, as it then stood, was for the most part well calculated to attain the objects which it had in view.

But there were one or two points on which his Hon'ble friend had commented, and expressed the apprehensions which MR. COCKERELL believed from all that he had heard were shared by other Native gentlemen in regard to certain provisions of the Bill, to which he would direct his remarks:—

First.—The Hon'ble Member had dwelt with some satisfaction on the fact that the Bill provided for the trial of breaches of the law by District Magistrates only. Now MR. COCKERELL, for his own part, would say that although this was a precaution in the right direction, it was scarcely necessary,

and that other Magistrates might have been vested with this power; for the person who tried a case of this kind was not called upon to decide, or even pronounce, any opinion upon the question as to whether a particular performance was admissible or not. All that the Magistrate trying these cases had to do was to ascertain that the performance, for taking part in, or being present at which, somebody was brought to trial, was actually prohibited; that the prohibition had been duly promulgated as required by law; and with regard to those who were charged as spectators of the performance, that they were fully aware of its prohibition and yet elected to witness it. Now these were simple questions of fact, and in no way touched the primary and more important question as to whether the performance came within the category of those at which the Bill aimed, and which *ought properly* to be prohibited.

The decision of that question was the function of the Local Government, or the officer to whom the Government might delegate its authority in the matter.

His Hon'ble friend had further suggested that a Native official should be associated with the Magistrate for the trial of these cases. Now MR. COCKERELL thought that this suggestion, as he had just explained, proceeded from a misapprehension of what the Magistrate would have to do in trying those cases,—the question which would really have to be adjudicated in these trials, and which was exceedingly simple. The only important point to be determined under this Bill was, whether the performance which was about to take place, or which there was reason to suppose was about to take place, was a proper or improper performance, and one which should be allowed or prohibited, and the authority with whom rested the decision in such case was the Local Government, or some officer in whom the Government reposed full confidence. Therefore, if a Native was to be associated with the person who had to determine this question, he must be associated, in some manner, either with the Local Government, or the officer to whom the Local Government might delegate its functions. MR. COCKERELL had no doubt that the Local Government would, in this matter, as it undoubtedly did in many others, consult well-informed Native gentlemen, whose judgment and opinion on such a question was likely to be of public benefit, if the character and nature of the performance were such as to suggest doubt as to whether it should be prohibited or not. He knew that, in the ordinary administrative affairs, Native gentlemen were frequently consulted upon certain questions in which they were conversant with the feelings of their countrymen, and their advice or opinions were likely to be advantageous to the public interests.

But for obvious reasons no directions to the Administration on such a matter could properly find place in an Act; the discretion of the Local Government could not be so hampered and limited with any practical advantage. In this, as in other matters, it must be left absolutely unfettered, and there was no reason for anticipating that it would not be wisely exercised.

Then, his Hon'ble friend was not satisfied with the license granted by the Bill in respect of "jātras;" he would wish it extended to all performances or ceremonies of that nature, whether connected with religious observances or not. Now, the word "jātra" applied, in its original signification, to pilgrims. The original meaning of the term was a pilgrimage, and "*jātris*" was the ordinary vernacular designation of pilgrims. But the term *jātra* had come to be applied to performances of the kind to which his Hon'ble friend had alluded, and which were of common occurrence, and identified by that name, he believed, all over the territories included in the Bengal Presidency; but, apparently, the term had no such signification in either Madras or Bombay. The Hon'ble Member claimed for these performances immunity from the restrictions of the law, not only when they were connected with some religious festivals, but also when they took place on what he termed private occasions. MR. COCKERELL supposed his Hon'ble friend meant by this "upon all occasions" other than religious festivals, because the Bill merely dealt with performances in public places, and in no way interfered with what was of a really private character. Assuming that he wished to apply the exemption to public performances wholly unconnected with religious ceremonies, then MR. COCKERELL would say that it was not desirable that any such exemption should be made. The reason for exempting *jātras* was the desire not to legislate so as to interfere in any manner with the religious ceremonies or observances of the people, and with that object, and that only, it was proposed to enact the exemption as it stood in section 12 of the Bill.

To extend the exemption as now proposed would be to subvert the principle of the Bill, which was designed to restrain public performances within the bounds of propriety; for if the religious element be eliminated, there was no ground whatever for placing the *jātra* on a different footing, in regard to the controlling powers to be conferred by the proposed enactment, from that of any other public performance.

For his own part, he (MR. COCKERELL) would say that he thought that legislation in the direction of the Bill was urgently called for, and that the repressive powers to be conferred on the Executive were of a very moderate character,

surrounded by efficient safeguards and such as could not reasonably be objected to.

His HONOUR THE LIEUTENANT GOVERNOR said that although he was very unwilling to trouble the Council, he thought he ought not to give quite a silent vote on this occasion, as it was a measure which so immediately concerned the interests of Bengal. He must express the satisfaction with which he heard the moral support given to this measure by his Hon'ble friend and colleague, Rájá Narendra Krishna. He was sure that the dictum of a Native gentleman who was so eminent in rank and so highly esteemed and respected in the country would carry great weight with the entire Native community.

As to the precise verbal objection just raised, HIS HONOUR was anxious to explain for the satisfaction of his Hon'ble friend, that the objection he raised was really met by the terms of the Bill. His Hon'ble friend desired that the words "and on other occasions" should be added to the end of section 12. By that, HIS HONOUR understood him to mean, on all private occasions. But as the Hon'ble mover of the Bill knew so well, these private occasions were expressly saved by the definition given in the explanation to section 3. It was there explained that the Act only applied to public performances in a public place or in a place where money was taken at the door. By that, therefore, performances on all private occasions were saved; and the desire of his Hon'ble friend was entirely met and his objection was really obviated.

Then, passing from this particular point, HIS HONOUR deemed it his duty to give whatever weight might attach to the authority of the Local Government in favour of this measure. And though he was very sorry to see that so many Native gentlemen, whose opinions he so much regarded and respected, seemed to be opposed to this measure, he deemed it to be his duty to state publicly and fearlessly, that this measure was absolutely necessary; that if it was not passed, mischief would arise of a moral as well as of a social characte —mischief which would be detrimental to the prestige and character of British rule in the metropolis of India. It was all very well to say, as HIS HONOUR was sorry to see so many highly respectable Native Associations had said, that the Bill was not necessary because the existing law was quite sufficient. Now that objection was answered by the facts of the case. It was nothing short of the truth when he said that cases had occurred in this city, last Spring especially, and on former occasions generally, which fell within all the categories prescribed in section 3 of the Bill, that was to say, there were cases of a scandalous and defamatory character; they were calculated to excite feelings of disaffection to the Government; they were likely to deprave and

corrupt persons present at the performance. He might really go farther and say that they were injurious and derogatory to individuals and calculated to stir up angry feelings between several important classes within these Provinces. These performances were reprobated not only by Europeans, but equally by Natives also. He believed there was not a single right-minded and educated Native throughout Bengal who did not utterly condemn what had occurred.

Then, as to the law being sufficient for protection, all he could say was, that they did try to put the law into force, and that at first people obeyed, but the offenders very soon took legal advice, and passively defied the authorities. And it was certain that, had not His Excellency the late Viceroy seen fit to pass an immediate Ordinance, these performances would have gone on. There was no legal power whatever to prevent them; and if they had gone on, then one evil would have stimulated another. They obtained a certain sort of success, a certain sort of spurious notoriety accrued to them, and this would have encouraged others; and just as fire went on feeding itself; just as a snowball gathered force as it rolled down a precipice — *vires acquirit eundo* — so this evil would have gone on increasing until really at last serious mischief would have been done.

So much then for the absolute necessity. But he should like the Council to consider two further points, namely, the private tendency and the public tendency of these performances. Now, as regards private defamation, this sort of holding up people to public scorn, either as a class or as individuals, was a very difficult thing to bring to a successful prosecution before the Courts, especially when a whole class was concerned. Who was to come forward and indicate that the defamation affected himself? Who was to volunteer to say that such an ugly cap fitted himself? And as a proof of the extreme difficulty of conducting such prosecutions, he might state that, of the several cases which had occurred within the last few years, only one had been successfully prosecuted.

Then as regards public tendency, the manner in which all the most revered institutions under which we lived had been brought into contempt by public exhibitions, might not amount to treason, and not even to sedition, yet nevertheless, everything which politically ought to be treated as sacred in the eyes, not only of Europeans, but more especially of Natives, might be brought day after day, month after month, into greater and greater contempt. And though political danger was not to be feared—indeed, ideas of danger should not lightly be evoked—yet it was undesirable that this sort of thing ought to be permitted,

and he was quite certain that no Government on earth would permit it. And as for stopping such things, by means of political prosecutions, every body knew that this was a double-edged weapon, fraught with divers objections, which ought not lightly to be resorted to. So that, both upon private and public grounds, there was the strongest argument, which argument had been used by the Hon'ble Mover, that prevention was better than cure. And in saying this he was most anxious to avoid any misunderstanding as to there being any idea whatever of disaffection or disloyalty spreading in Calcutta or in Bengal. His Honour affirmed that the people of Bengal were most loyal and well-affected. He also affirmed that these occurrences were reprobated as much by the vast majority of the Natives as the Government could possibly desire. Nevertheless, it was possible that, if these objectionable performances were to be repeated for any lengthened period of time, gradually the youth of the country, the educated, quick-witted and aspiring young men of the rising generation, would become—he would not say corrupted or disaffected, but—not so well-affected as we might desire them to be. In fact, the prevention of these performances might be said to be the means of saving them from themselves—from those evil influences to which they might otherwise be subject.

These then being the broad grounds for introducing a measure of this kind, he felt bound to add that every reasonable concession had been made by his Hon'ble friend the mover on the side of the objectors. Religious festivals had been expressly excluded, and now all private performances had been excluded also. He was well aware that this concession of excluding private performances might possibly be open to abuse. But he earnestly hoped that the forbearance of the legislature would not be abused, and that it would never be necessary for the Local Government to ask this Council for further powers in that respect. And as a proof that the people were really a law-abiding and a law-respecting people, he might remark that, from the date that the Ordinance was issued by order of the late Viceroy, not a single case of this objectionable character had occurred, and the evil had wholly ceased. The people knew that this Ordinance was on record, and they never attempted to disobey it. And he was sanguine that if this measure should be passed to-day, he should always be spared the pain of ever having to put it in force. In short, the best proof of the success of the measure would be the fact of the people so loyally obeying the rules that penalties had never to be inflicted.

And, in conclusion, His Honour need say but little as to the dramatic literature which it was said this measure would discourage. The dramatic literature of Bengal was in a very rising and promising condition. It greatly exercised

the thoughts and imaginative faculties of the people, and we might hope that this measure, so far from checking the intellectual amusements of the age, would keep the national drama pure and sound, and would help it to flourish. So that on every ground upon which he had touched he affirmed that this measure could not possibly do harm, while, on the other hand, if rightly handled, it would be of use in preventing possible mischief.

The Motion was put and agreed to.

The Hon'ble RÁJÁ NARENDRA KRISHNA moved that, to section 12, the words "and on all other occasions" be added after the words "religious festivals."

The Motion was put and negatived.

The Hon'ble MR. HOBHOUSE then moved that the Bill as amended be passed. He had only some observations to make in respect to what had fallen from his hon'ble friend Rájá Narendra Krishna. As to the association of a Native official with the Magistrate, he entirely agreed with the remarks of Mr. Cockerell, that that was a matter which would be within the discretion of the Local Governments, and he had no doubt that they would exercise a wise discretion, but we could not provide for it in the Bill. With regard to the amendment which was just lost, it seemed to him that the Bill would work satisfactorily. If a *jātra* was religious, it would fall under section 12 and be saved; if it was really private, it would fall under section 3 and be saved. If there was an essentially public performance, say in the middle of a street, but called private because it was got up by a private individual, such a pretence of privacy would be an evasion of the law. The performance ought to fall within the scope of the law, and he did not think any body would wish to save it if it was of an objectionable nature.

With regard to the passing of the Bill now, he observed that none of his honourable friends had said anything about the memorials which they had received. He therefore concluded that they were all of opinion that in a case like this, where there had been such a long publication of the Bill, where everybody had known what they were about to do, where the Committee had made no alterations in the Bill, excepting alterations narrowing its original scope and limiting it, in that case persons were bound to come in good time, if they desired the Council to delay their action; and that if they did come at the latest moment, they ought to show the strongest grounds, that there were some new facts or some new considerations which had previously escaped notice, and of which it behoved the Council to take notice in order to save themselves from error.

The Hon'ble THE PRESIDENT said that it was quite clear from his hon'ble friend Mr. Hobhouse's full explanation that every possible consideration had been given to the various representations received against the Bill or against parts of it, and he thought that the Bill had been improved by the attention which had been paid to those representations. As to the necessity of a Bill of this kind, he (THE PRESIDENT) individually had no doubt whatever, and it appeared to him that the precautions with which the Bill was hedged in amply provided that no oppressive or useless action would be taken under it if it became law. He did not think that the passing of the Bill, which had now been many months before the public, should be any longer delayed.

The Motion was put and agreed to.

LAND IMPROVEMENT BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to amend the Land Improvement Act, 1871.

REGISTRATION ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to amend the Indian Registration Act, 1871. He said that, although the Bill had been very much enlarged, that was only due to the circumstance that the Committee found the amendments so numerous, that it was more convenient to re-enact the existing Act with the amendments woven into its body, than to leave them in a separate document. That was the only reason why the Bill appeared to have been so much changed.

INDIAN MUSEUM BILL.

The Hon'ble MR. BAYLEY presented the final Report of the Select Committee on the Bill to provide for the management of the Public Museum at Calcutta. He said the progress of this Bill had been deferred for certain technical reasons, there having been considerable delay in transferring the collections of the Asiatic Society to the new building, and it had been found that, according to the existing law, the trustees of the Museum could not sign the lists accepting the custody of the collections until the collections themselves were so actually transferred. That difficulty had now been removed, and the lists were in the course of signature. But the delay had enabled the Select Committee to re-consider a few points in the Bill, and they had therefore submitted a further report, suggesting one or two alterations, which he

ventured to think were improvements. The chief of these consisted in the reduction of the number of *ex officio* trustees. It was found that several of the offices which now constituted their holders *ex officio* trustees of the Museum were not necessarily of such a character as ordinarily to be held by gentlemen who took an interest in scientific matters. And moreover almost all the incumbents of these offices were gentlemen so burdened with other duties as to make their position as trustees purely nominal. It had been therefore determined to omit from the Bill the names of the Chief Justice, of the Vice-Chancellor of the Calcutta University, and of the Bishop of Calcutta. The Select Committee proposed to supply their places by enabling the trustees to elect gentlemen who would be willing, and able, actively to assist in carrying out the business of the Museum.

The other substantial alteration in the Bill consisted of a reduction in the number of trustees necessary to constitute a quorum. There had been considerable alterations of drafting induced by these changes; but in other respects the Bill had not been altered. He proposed at the next meeting to move that the Bill be passed.

BRITISH BURMA FOREST BILL.

The Hon'ble MR. HOPE introduced the Bill to consolidate and amend the law relating to the management and preservation of Government forests in the province of British Burma, and moved that it be referred to a Select Committee with instructions to report in three months.

The Motion was put and agreed to.

GENERAL FOREST BILL.

The Hon'ble MR. HOPE asked leave to postpone the motion for leave to introduce a Bill to consolidate and amend the law relating to the management and preservation of Government forests, to the transit of forest-produce and to the duty leviable on timber.

Leave was granted.

KAIRA THÁKURS INCUMBRANCES BILL.

The Hon'ble MR. HOPE asked leave to postpone the motion for leave to introduce a Bill to relieve from Incumbrances the estates of Thákurs in Kaira.

Leave was granted

BHAUNAGAR THAKURS BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill to give better effect to certain agreements with the Thákur of Bhaunagar. He said,—"I must apologize to the Council for the short notice on which this Bill is exhibited to them. I know it is inconvenient, but I trust they will be of opinion that there is sufficient excuse for it. It is true that the scope of the Bill is very limited, whether as regards time or space or subject-matter. Upon what subjects it will operate is matter of pure conjecture, and, if the Bill succeeds, always will be matter of pure conjecture, for it is intended to operate by way of prevention only. But it happens to be a proper part of the political action of the Government of India; and its frame depended on the form which that political action was to take. We have only just received from England a final decision on the subject. At the same time we have learned from the other side of India that speedy action is necessary if we would avoid embarrassment. The broad object of the Bill is to prevent litigation and vexation which may otherwise be caused by the circumstance that the tract of country, which my Hon'ble Colleagues may see described in the schedule, and which we call the scheduled villages, has for ten years and upwards been treated as a Native State, as a country which, so far as regards British law, is a foreign country, whereas in point of law it remained British territory and should have been so treated.

"The Council I hope will not misunderstand me. I am not asking you to lift your little fingers for the purpose of turning British territory into foreign. We have no power to do any such thing. Our territorial powers are strictly confined to British India. If we took any step to make an acre of British India not British India, our action would be null and void. That may be done only by the Imperial Parliament or by the Crown. But we have the power of passing such laws within British India as may enable political arrangements to work more smoothly. And it is an operation of that kind which I am asking the Council to perform.

"It is now my business to explain to you what is the nature and origin of the mistake which gives us uneasiness. For though, when all is told, it will be seen that the Bill is a very plain and simple one, indeed a very small one, it is necessary for you to understand the position of affairs which makes it so. The story is rather a disastrous one, and it would be, if fully told, a very long one, with many episodes and abounding in detail, but I will try to state what is material for the present purpose within a moderate compass. I may say—

Longa est injuria, longæ Ambages, sed summa sequar fastigia rerum.

"I hope the Council will not think I am forfeiting my pledge to be brief, if at the outset I carry them back more than seventy years in our history, for there, so far as we are concerned, lies the origin of the present difficulty. Previous to the war which ended in the treaty of Bassein, the territory of Káthiáwár was occupied by a number of Native potentates, towards whom the Peshwá and the Gackwár, or they and the Mogul together, stood in the relation of Paramount Power. On the conclusion of the treaty of Bassein in 1802, certain portions of the country, amongst which were the scheduled villages, were ceded in sovereignty to the British Government, and, in the year 1815, they were formally added to the Presidency of Bombay and became subject to the Bombay Regulations. As regards the other portions, they have remained Native territory, but by successive steps the Crown has attained the position of Paramount Power over them. Now every Member of Council knows that in the course of building up this empire we have acquired territories and powers in infinitely various ways; that we stand in infinitely various relations to Native Rulers, and that their connection with us has infinitely various degrees of approachment, shading off from almost entire political incorporation to almost entire independence of everything except the ultimate political power necessary for preserving the peace and unity of the country.

"The Káthiáwár States are not among those who enjoy a very large amount of independence on the Paramount Power. They are very numerous—I think 188 in number—mostly very small, and they used to be, until recent times, amongst the most turbulent and lawless people in India. Consequently, we have found it necessary, as rulers responsible for the public peace, to press upon these States some of the institutions essential to orderly government. By various arrangements, the last very important one of which was effected in the year 1863, we have established a Political Agency, have introduced codes of laws, have graded the jurisdiction of the chieftains, and have provided for the administration of justice, partly by the hands of the chieftains themselves, and partly by the officers of our Agency. So much indeed have we done there, that to some it has seemed that Káthiáwár has become part and parcel of British India. But that is not so. All that has been done has been done by, through, and in combination with, the chieftains. Laws made for British India have never operated in Káthiáwár, and though the Paramount Power has been exercised in several departments of government, a certain substantial amount of sovereignty has been left to the chieftains.

"One of the principal Káthiáwár potentates is he who is called the Thákur of Bhaunagar, a State with which we have had relations for upwards of 100

years. He is also, and has been for a great many years, the proprietor of the scheduled villages. Well, the scheduled villages are intermingled with the Thákur's Káthiáwár villages, and great inconvenience and irritation were found to result from the circumstance, that in one village the Thákur, besides being proprietor, was an independent chieftain, making and administering law subject only to the arrangements made by the Agency, while the next village, of which he was also proprietor, was subject to all the minutiæ of law affecting a Bombay Regulation district. The inhabitants of two contiguous villages had the same origin, the same faith, habits, manners and traditions, they looked up to the same immediate superior, while the systems of law by which their affairs were regulated were essentially different. Continual disturbances and complaints arose from this cause, and led to a careful enquiry into the whole matter which was instituted in the year 1859. It was in the result determined that so much of the Thákur's property as had been ceded in sovereignty to the British Government in 1802 should be ceded over to him, subject only to the arrangements made for the Káthiáwár Political Agency.

"Now this is the particular operation with regard to which it has been recently discovered that a mistake was made. It turns out that the instruments which were framed for carrying the intention into effect did not actually carry it into effect. But I have stated to the Council what the real intention was. And of that I speak without doubt or hesitation, not only because the officers who took part in the transaction are clear about it; not only because all parties have ever since its completion treated the scheduled villages as being part of a Native State and no part of British India, but also because there were incidents in the course of the negotiations which set the intention in the clearest and strongest light that is possible.

"The principal one of these incidents I will mention. It did not appear in the course of the litigation I am about to speak of; probably it would not have been admitted in evidence if it had appeared; but we are a political and not a judicial body, and as a piece of moral evidence, I think it will carry conviction to every man's mind.

"The negotiation with the Thákur was embodied in a written agreement, dated 22nd December 1860, the terms of which I shall presently have to state more particularly. Then it was proposed to embody it further in an Act of Council, and a question arose by which Council the Act should be passed,—by the Bombay Council or that of the Governor General. That question got into the hands of a very able predecessor of mine, Mr. Ritchie, who was then the legal adviser of the Government, and whose work I never see except to

admire. When the papers came to him he at once put his finger on the critical point. He pointed out that, if Káthiáwár was no part of British India, we were turning the scheduled villages into foreign territory, a thing which should be done by the Executive and not by the Legislature. I will read to the Council what Mr. Ritchie said:—

"'If the province of Káthiáwár be deemed a foreign province, not forming part of Her Majesty's dominions in India, the transfer of Bhaunagar and the ten villages from the jurisdiction of Ahmadábád to that of Káthiáwár cannot be effected by the proposed Bill, or by any Act of either legislature.

"'For the transfer of a portion of British territory in India to a Foreign State is of course not a fit subject for legislation at all. Moreover, it would fall within the prohibition in the Indian Councils' Act against any legislation affecting the allegiance of the inhabitants to Her Majesty, or the sovereignty or dominion of the Crown over that part of Her Majesty's dominions. And supposing the agreement with the Thákur to have been properly ratified in England, the transfer to a Foreign State will already have been effected by that agreement, considered as a treaty; and the towns and villages transferred by it would no longer be in British India, or within the jurisdiction, for purposes of legislation, of the Governor General in Council or the Governor of Bombay in Council.'

"It is clear that, if only Káthiáwár was foreign territory, Mr. Ritchie felt no doubt that the Executive might do what was wanted; but he warned the Legislature against having anything to do with it.

"Well, that opinion raised the question whether or no Káthiáwár was foreign territory, and that question was referred back to Bombay. It was found to involve a great deal of research, it elicited different opinions from different minds, and it was finally referred to the Secretary of State in Council, who formally decided that Káthiáwár was not part of British India.

"The decision of the Secretary of State was given in the month of August 1864, and the negotiations with the Thákur were resumed. They were carried into effect by a notification in the Gazette dated 29th January 1866, and no Act of the legislature was ever passed on the subject. The Council therefore will see, that the reason why neither they nor the Bombay Council were asked to pass any law was because, after the issue had been raised and a formal decision given, after great discussion and deliberation, it was intended to make the scheduled villages foreign territory, and therefore British Indian legislation was wholly out of place.

"Now I must proceed to state the circumstances which have led to the discovery that the scheduled villages have in point of law remained British territory. Any one who will look at the schedule of the Bill will see the

name of Gángli among the villages. Some time before the notification of 1866, when the villages were clearly British territory, an ordinary suit was brought before the Munsif of Gogo to recover a piece of land situated in Gángli. The claim was defended, apparently with great vigour, and the battle raged with various fortune. The Munsif gave the plaintiff a decree. The Judge of Ahmadábád reversed the decree. The plaintiff appealed to the High Court, who reversed the decree of the Judge and remanded the case for retrial. All that happened before the notification of 1866, and the suit was pending on the remand when the notification was issued. The defendant then took a new point, and objected that the Judge had lost his jurisdiction by the circumstance that the village of Gángli had ceased to be British territory. The Judge overruled the objection, on what ground I do not know, nor is it material, and he set the Munsif's overturned decree on its legs again. Then it was the defendant's turn to appeal to the High Court, and appeal he did, and the question was argued whether the Judge of Ahmadábád had jurisdiction or not. The High Court thought that, if the territory had actually been ceded, the cession would destroy the jurisdiction; but they held that it had not been ceded, because the Crown had no authority to cede any territory at all. This decision was given in the year 1870.

"Now, up to that time the Government of India had been no parties to the suit, but of course they heard of the decision, and it rather disturbed them. The Council will have noticed how entirely it was at variance with the opinion of Mr. Ritchie. It was also at variance with the opinion of the highest legal authorities, the English Crown lawyers, by whom they had been advised, on another case it is true, but on principles equally applicable to the Bhaunagar case. It negatived the existence of a power upon the validity of which the nationality of many territories depends.

"Finding it therefore decided in a private suit that this essential power did not exist, the Government of India contrived, by leave of the Court and by arrangement with the parties, to intervene in the suit. The case was re-argued upon some new materials before the High Court, who adhered to their opinion. It then went to the Privy Council, who delivered judgment on the 28th March last.

"It will be observed that, up to the point to which I have brought my narrative, it had not occurred to any one to doubt that a *de facto* cession had been made. It was the cardinal fact with which the opinion of Mr. Ritchie, the decision of the Secretary of State, and that of the High Court of Bombay, were all concerned. The only motive of the Government of India for inter-

vening in the suit and appealing was to have the legality of the supposed cession decided. Never was there a more conspicuous illustration of the saying that a blot is not a blot till it is hit.

"It turned out that there was another point in the case, and one which, in the opinion of the Privy Council, rendered it impossible to pass a formal decision upon the great constitutional question. On examining the written Convention of 1860 made with the Thákur of Bhaunagar, their Lordships found that it was not a cession at all. I will read what they say:—

"'The town and port of Bhaunagar were part of the territory to which the 7th Article (that directly bearing upon the present question) relates. That Article is in these words: 'Upon the above conditions Her Majesty's Government agree as follows: Government concede, as a favour, and not as a right, the transfer of Bhaunagar itself, with Wadwá, Síhor, and ten subordinate villages, from the district of Gogo, subject to the Regulations, to the Káthiáwár Political Agency.'

"'This is not the language of cession. It is *primâ facie* nothing more than an engagement for the transfer of the places mentioned (including Gángli), which were then, beyond question, British territory, from a Regulation Province to an extraordinary jurisdiction. The other Articles are consistent with this view.'

"But if the document of 1860 was not a cession, there was clearly nothing else to constitute one. The notification of 1866 simply brought into active operation the document of 1860. I will read it to the Council:

"'It is hereby notified that, in accordance with a convention made between His Excellency the Governor of Bombay and His Highness the Thákur of Bhaunagar, the undermentioned villages belonging to the Thákur of Bhaunagar and situated in the Parganas of Dhanduka, Ranpur and Gogo, Zila Ahmadábád, are from and after the 1st February 1866, Sambat 1922, Maha Vud 2nd, removed from the jurisdiction of the Revenue, Civil and Criminal Courts of the Bombay Presidency, and transferred to the supervision of the Political Agency in Káthiáwár, on the same conditions as to jurisdiction as the villages of the taluqá of the Thákur of Bhaunagar heretofore in that province.'

"Of course if there had been no cession, the villages remained British territory, and the appeal had to be dismissed.

Perhaps I had better explain here, with reference to the ten villages spoken of in the agreement of 1860 and again in Mr. Ritchie's opinion, that in order to preserve the necessary brevity and clearness, I am obliged to omit some whole stages of these transactions. The negotiations lasted many years, and it was not at first, but later on, that it was resolved to cede the whole of the scheduled villages. Such incidents however are immaterial to the purpose now in hand. Whatever territory was transferred was transferred on the

terms of the two cardinal documents, the agreement of 1860, and the notification of 1866, and on these therefore I have concentrated the attention of the Council.

"I am sorry, speaking as a lawyer, to say that failure is not unfrequently the fate of lawsuits instituted in order to get a particular point decided. It is often found that some preliminary objection to its decision exists. But in this instance it is very fortunate that theirLordships have not left us in the dark as to their opinion on the really important point. In their judgment they say this:

"'The Judges of the High Court held that it was beyond the power of the British Crown, without the concurrence of the Imperial Parliament, to make any cession of territory within the jurisdiction of any of the British Courts in India, in time of peace, to a Foreign Power; and on that ground they made the order of the 24th March, 1873, now under appeal, confirming their former order of the 2nd December, 1870. The question, whether the law thus laid down by the High Court of Bombay is correct, was fully and ably argued at this Bar in July last; and their Lordships would have been prepared to express the opinion which they might have formed upon it, if in the result of the case it had become necessary to do so. But having arrived at the conclusion that the present appeal ought to fail without reference to that question, they think it sufficient to state that they entertain such grave doubts (to say no more) of the soundness of the general and abstract doctrine laid down by the High Court of Bombay, as to be unable to advise Her Majesty to rest her decision on that ground.'

"I may add that I have seen a careful report of those full and able arguments to which their Lordships refer, on both sides of the question, and of the interpellations of the Judges, which, even if we had not the collective opinion which I have quoted from the judgment, would leave no doubt on any one's mind how satisfied they were of the legality of such a cession as that which the Government of India intended to make.

"I suppose that every one will agree that, being able to complete our engagements with the Thákur, we are bound to do so. For all the reasons which originally dictated those engagements exist in full force, with the additional reason that our honour and good faith would be called in question if we did not complete them. Perhaps it is superfluous to say that the Thákur himself is urging us to do so.

"We learned the new position of affairs when we received a copy of the judgment of the Privy Council some time in the month of May last. We have lost no time in communicating with the Bombay and Home Governments, and the result is a notification which is dated the 5th December, and has been

issued in the *Gazette* of this morning. Its recitals first tell briefly the story which I have been telling at greater length. It then proceeds :

"'10. And whereas the Secretary of State for India has, on behalf of Her Majesty the Queen of Great Britain and Ireland and Empress of India, given his sanction to the cession intended to be effected by these presents;

"11. The Governor General in Council, with the sanction aforesaid, doth hereby cede and grant to the said Thákur of Bhaunagar, his heirs and successors, the said Scheduled villages, to hold the same unto the said Thákur, his heirs and successors, on the terms and subject to the rules on and subject to which he holds the said Káthiáwár villages.'

"There is then a proviso for resumption of the territory in case of misgovernment. That, we hope, will be construed as a complete cession to the Thákur, and as bringing the legal status of the villages into accord with their actual administration.

"So far for the future. But then, what is to be done for the interval during which these villages have been governed illegally, though in perfect good faith? It is clear that persons who have been subjected to criminal or civil process may bring actions for trespass or assault; that those against whom decrees have been passed may deny the validity of those decrees and litigate the questions decided by them all over again. There has in fact been no legal basis for many of the most important functions of Government for ten years and upwards.

"It is true that there would be much practical difficulty in the way of such litigation by reason of the territory having ceased to be British. I do not suppose that the Káthiáwár Courts would permit land to be brought into litigation afresh merely because there was a technical flaw in the title of the Courts who had adjudicated on it; nor, if they were disposed to do so, could we help or hinder the matter, because that land has passed beyond our jurisdiction. Probably any one who sued in British India on the personal grounds I have suggested would not recover any substantial damages, if he recovered any at all. I do not wish in any way to exaggerate the importance of this Bill. Probably it will prevent litle else but some purely frivolous and vexatious litigation for damages, and the retrial of some personal claims. But that is worth preventing, and the Bill is certainly the proper complement to the notification. The notification leaves only a small and uncertain portion of the ground uncovered, and the Bill covers that small and uncertain portion. It says in effect that, so far as any cause of action may exist in British India by reason of the common misapprehension under which all parties have laboured, that cause of action shall be destroyed.

"As regards the particular suit which has raised the difficulty, we are informed that the party who got the original decree in the Munsif's Court,—I am almost ashamed to say how many years ago—is pressing for execution, and that information has made it desirable to be speedy in completing the cession in proper form. I apprehend however that this Bill has no effect whatever on the suit. The suit relates to land now made part of a Native State, and the cession removes that land from the jurisdiction of our Courts. That was the view taken by the High Court of Bombay, and the Privy Council express agreement with them in a passage which I will read. They say—

"'With respect to the competency of the Courts of the Bombay Presidency to proceed with the suit between these parties, if Gángli had, by any valid cession, ceased to be British territory, their Lordships agree with the High Court that the foundation of the jurisdiction of those Courts over the subject-matter of this suit, and the parties thereto, was territorial, and that it could no longer be exercised (whatever might be the stage or condition of the litigation at the time) after such a valid cession had been made.'

"Though therefore the language of this Bill is calculated to stop the suit if we had jurisdiction over the land, the suit is stopped antecedently, and the Bill cannot affect it.

"It depends upon the action of the Council and of the President whether I introduce this Bill to-day; but anyhow it will probably save repetition if I now call attention to its frame. It consists principally of recitals to explain the position which I have been explaining in greater detail. The first section is formal. I will only notice that, on the face of the Bill and elsewhere, we have called special attention to the fact that its operation is confined to British India, and does not embrace the scheduled villages after the cession.

"The second section frees the villages from the Regulations during the interval of the mistake, as they were intended to be freed; and it lays down a foundation for the third section, which carries into effect the main purpose of the measure, the prevention of litigation. The fourth section is merely for the purpose of taking care that no personal jurisdiction which our Courts may have beyond the limits of British India—such as that over European British subjects—shall be lost. It is hardly necessary, and is inserted only for caution's sake.

"There is perhaps a possibility, but it is such a bare possibility, so remote, so conjectural, so improbable, that I hardly like to trouble the Council with it at all, under which the Bill might have a larger operation than I have mentioned. Still we have had some surprises in this matter, and may have

others. Suppose it should turn out that what we have done is still only calculated to put the villages under the Káthiáwár Agency and not to alter their nationality. In that case our law would operate in the villages, and section two would have the effect of what we used to call a deregulationizing Act, removing territory from the Regulations, in order that it might fall under a special system of government. But I will not further discuss anything so speculative. In my view the Bill is merely a Bill of peace, and affects only what is past.

"I hope I have now made it clear that this Bill, though it involves a long story, is extremely simple in its nature: that it has only a very limited operation; that so far as it operates at all it must be beneficial; that it is intended to give such validity as this legislature can to acts done by a number of persons in good faith, in the course of their apparent duty, and under the influence of a general mistake; that it does not require any lengthened consideration by this Council; and that it is desirable to pass it as it were *uno flatu* with the notification, and to make, as far as we can, a single and complete end of our long protracted arrangements with the Thákur of Bhaunagar.

"With regard to further proceedings beyond leave to introduce the Bill, I am entirely in the hands of the Council and the President. I cannot say that the Bill is urgent. The notification was urgent; but we have not received notice of any actual litigation which, on our theory of the notification, this law could affect. At the same time we were long ago told by the Bombay Government that such litigation might occur, and were asked to pass an Act of indemnity. The matter has been delayed till the cession could be determined on, and it will be best, as far as possible, to make a single transaction of it. At the same time, if there is a single Member of Council who desires more time to consider the matter, or who thinks it ought to go into Committee, I shall not press my wish to pass the Bill to-day."

The Hon'ble MR. HOPE said he laboured under some disadvantage in addressing the Council, as it was not until this time yesterday that he had received intimation that there was any present intention of proceeding with the Bill; and it was not until the previous evening that he had received some of the papers relating to this Bill, and they were not sufficiently complete to enable him to comment on the measure in the way he had wished to do. On the other hand, he ought not to allow the Bill to pass, giving only a silent vote, as he was the officer to whom had been entrusted the duty of carrying on the negotiations between the Thákur of Bhaunagar and the Bombay Government on the basis of very complete reports by Mr. Peile, which had resulted in the

agreement of 1860. He would not attempt the task, which would be equally superfluous and impertinent, of following the Hon'ble Mover on the technical points upon which he had expressed his opinion, or in the history of the case, which he had explained so completely. At the same time, in view of the possibility at which the Hon'ble Mover had glanced, that the notification which had been issued yesterday might, at some future time, lead to further proceedings, it might be of some use hereafter, if not at present, if he alluded to some remarks in the judgment of the Privy Council, which had not been specially noticed by the Hon'ble Mover, and which might be briefly described as being possibly likely to produce an impression that the agreement of 1860 did not mean a cession of territory, and that there was in fact no foreign territory to cede to on that or any other occasion. The parts of the judgment to which he alluded would be found at pages 8 and 11. In the former, the remarks in regard to the 7th Article of the agreement ran thus :—

"This is not the language of cession; it is *primâ facie* nothing more than an engagement for the transfer of the places mentioned (including Gángli), which were then beyond question British territory, from a Regulation Province to an extraordinary jurisdiction."

And later on at page 11 :—

"What was attempted was, in their Lordships' judgment, neither more nor less than a re-arrangement of jurisdictions within British territory, by the exclusion of a certain district from the Regulations and Codes in force in the Bombay Presidency, and from the jurisdiction of all the High Courts, with a view to the establishment therein of a Native jurisdiction under British supervision and control."

With reference to these remarks, MR. HOPE was in a position to say, in the first place, that what was intended and attempted was not to make any such re-arrangement; what was intended was a complete and effectual cession of territory to a Foreign Power. He would first of all satisfy the Council what it was that was intended at the time, and then endeavour to show that the view then taken of the status of Káthiáwár was the only correct view. It so happened that he was able now to produce before the Council the Guzaráthi agreement, in original, which had been drawn up between himself and the officer who was vested with full powers by the Thákur of Bhaunagar to settle with him on the subject. That agreement did not follow the order of the Articles in the agreement which had been afterwards drawn up, but it showed most clearly what it was the intention of the latter document to do. It stated the several claims of the Thákur of Bhaunagar under main headings, and the first of these was "independent sovereignty," or autonomy, the words used being "swatantra hukumat," in respect of the villages in question. So that it was perfectly clearly

understood, both by the Thákur of Bhaunagar and MR. HOPE, that the question was, whether the Thákur was to be allowed to hold them as an independent Ruler, and not as the subject of any Foreign Power. And with regard to the transfer of the villages, all of which were now included in the schedule of the Bill, it was here said that the ones then ceded were to be placed or "thrown under Káthiáwár." In another passage, further on, the words used were that they should be "considered to be in Káthiáwár." That document, as MR. HOPE said, was the original one, showing the terms of settlement. It was shortly followed by a formal one on December 22nd, 1860, between Mr. J. B. Peile, who was on special duty in connection with the case, and had submitted a very full and able report on it to Government, and the Thákur. In this document, the language employed was that "Government concede as a favour, and not as a right, the transfer of Bhaunagar itself, with Wadwá, Síhor, and ten subordinate villages, to Káthiáwár." The next step was an arrangement which bore the same date as that which he had just read, but which was really executed a short time afterwards by Sir George Clerk, then Governor of Bombay, on the occasion of a visit made by him to Bhaunagar. In this, the phraseology was slightly altered, to secure, as it was supposed, greater clearness. The words were—"the transfer of Bhaunagar.....from the district of Gogo, subject to the Regulations, to the Káthiáwár Political Agency." The Bombay Government at that time contemplated the passing of an Act to bar the jurisdiction of the Courts. Owing to discussion on this and some other points, the arrangement was not entirely carried out. In a Convention executed on April 25th, 1866, by Sir Bartle Frere and the Thákur, the words were substantially the same, or, if anything, rather more forcible, namely, "from the jurisdiction of the laws and Acts of Government to the Káthiáwár Political Agency, on the same terms as the villages now under the Thákur's jurisdiction in Káthiáwár." And the notification of 1866, which the Hon'ble Mover had read, used the same words.

There could therefore be no question, as a matter of personal evidence, so far as evidence could settle it, that what was intended and understood by all the parties was a transfer of British territory to a Native State. He found however in the course of the judgment, that a certain phrase was quoted out of a letter written in 1865 by the Acting Secretary to the Government of Bombay, and it would appear that some remarks in the course of the judgment were based on the meaning of the phrase in that letter rather than on the actual documents and agreements which had passed between the parties. The words used were—"transfer * * * to the supervision, laws and regulations of the Káthiáwár Political Agency," thereby implying, as it were, that there were "laws and regulations" in the Káthiáwár Political Agency as well as in the

district under which these villages were first placed. But he would contend that such a document as that could have no value in the face of the actual agreement of the parties, and their well-known and specified intentions. It might be that the agreement actually drawn up did not express the intention in a form exactly calculated to meet the subsequent controversy, which it was then impossible to foresee would arise. But it was the form best suited at the time to express clearly to any one who was acquainted with the status of Káthiáwár what was the real intention of the arrangement.

Mr. Hope would now proceed to show that the view then taken of the status of Káthiáwár was the correct view. He would endeavour as far as possible not to go over the same ground as had been covered by the Hon'ble Mover. Mr. Hobhouse had already told the Council that, in the 17th and 18th centuries, the state of all this part of Guzarát was a very lawless one. Mr. Hope would say that Káthiáwár was almost independent; that the Muhammadan Power had never even in its best days succeeded in completely subjugating that portion of Guzarát; and that at that time whatever power it had was rapidly falling to pieces. The only thing it could do was to send an army occasionally into the province and levy black-mail so far as it could succeed in extracting it by fire and sword.

In the commencement of the 18th century, the new Mahrátha Power sprang up in Guzarát and entered into a series of contests with the Mahammadans, so that the whole province was at the mercy of one or the other Power. Among the Mahrátha leaders was Damají Gaikwár, who was the founder of the present Baroda dynasty, and he having held his own against the Muhammadans, used to make incursions into all parts of Guzarát, including Káthiáwár and Ahmadábád. In the course of time he fell out with the Peshwa, and having got the worst of it, was obliged in 1751 to sign a treaty, by which he relinquished a portion of the districts in his possession and of the tribute he used to levy by sending a force into Káthiáwár.

Matters went on in pretty much the same way until the commencement of the present century, the result of the whole of the operations being that the Peshwa and the Gaikwár succeeded in establishing to a considerable extent their power in certain taluqas on the east and near the coast of Guzarát, but did not succeed in establishing anything more than the practice of raising tribute elsewhere. The portions of the Bhaunagar territory which were now included in the Bill, were some of these portions over which the Peshwa had succeeded in getting such a large share of power. They were nearest to the coast and most accessible from the capital of Ahmadábád, and in the course of

time he had established a pretty firm footing in them, but even in them his rights were much less than in adjacent villages not belonging to any Chief.

Similarly, the Gaikwár got well established in certain parganas in Káthiáwár termed Amreli and Okhamandal, which he holds in full sovereignty to the present day. But as regards the rest of Káthiáwár, neither the Peshwa nor the Gaikwár ever had any definite power other than that of levying tribute or black-mail. This was sufficiently evident to any one who had studied the history from 1735 downwards, with the details of which MR. HOPE would not trouble the Council.

The next step in the matter was, that after the treaty of Bassein in 1802, by which the Peshwa's own possession of Gogo and Bhaunagar was transferred to us, we exercised our jurisdiction in them as we thought fit, and we found that we had also certain rights or interests in the tribute of Káthiáwár. Governor Duncan addressed a letter in 1804 to General SIR Arthur Wellesley, which set forth very clearly what the intention of the Government of that day was. He proposed that a force should be sent to Káthiáwár, and observed :—

"The extent of our interests in taking part in a Mulukgírí expedition through Káthiáwár may be viewed as comprehending the following objects :"

The first object Mr. Hope need not read, he explained, because it was one of general policy unconnected with Káthiáwár. The letter went on thus :—

"*Second.*—We shall see that the Mulukgírí funds are not misapplied.

"*Third.*—We shall secure payment of our own *Warrats* or assignments on these Mulukgírí collections.

"*Fourth.*—We may, if you please, obtain some possessions in Káthiáwár—such, for instance, as Porbandar. * * * *

"*Fifth.*—We shall be able to improve the Mulukgírí system so as to answer better the objects of humanity and the interests of the Gaikwár and Peshwa's Government."

This clearly showed that, at that time, we had not any "possessions" of our own in Káthiáwár. In consequence of that, a force did go into Káthiáwár, and the eventual result was that agreements were entered into by the Chiefs. As regards the character of those agreements, MR. HOPE would quote a letter from the Bombay Government in 1831 :

"On our first interference in 1807-08, Lieutenant-Colonel Walker promulgated, by an address to the Chiefs, the object we had in view, and proclaimed that this was confined to the settlement of the regular payment of their tribute; that no encroachment on their landed

rights or their independence was contemplated, and that the state of possession and power as it then existed was to be guaranteed; and at the same time both the British and Gaikwár Governments concurred in the policy of abstaining from a spirit of aggrandizement, and from every encroachment on the rights and possessions of the Chiefs. On the faith of these assurances the Chiefs entered into the measures suggested to them," &c.

He would also call a better witness than the letter of the Bombay Government, and that was Colonel Walker himself, who, in a report made in 1808, shortly after he had effected this settlement, with reference to a subsidiary arrangement by which the Gaikwár revenue due from this very State of Bhaunagar was transferred to the Hon'ble Company. What he said was:

"The general superintendency which the Company have acquired over the Rájá as a tributary, and the control of a valuable and extensive line of sea-coast, afford both the right and the means of regulating the conduct of the Rájá in every affair that bears relation to foreigners, or is inconsistent with our policy. This does not, however, convey any right on our part to interfere in the internal concerns of the Bhaunagar territory. In this respect the Chieftain of Bhaunagar still retains every right he previously possessed, undiminished by the transfer of his tribute to the Company. These rights consist in the exercise of every species of authority within his own territories, either of a revenue, fiscal or judicial nature, and are limited only by his general obedience to the superior Government as a tributary."

Nothing could be clearer than these terms, and MR. HOPE would invite the special attention of the Council to them. Subsequently, in a memorandum for the future management of the affairs of Káthiáwár and the Mahikánta, which the Gaikwár passed to the Bombay Government in 1820, it was provided that, "with a view to the tranquillity of the country and to the peaceable realization of His Highness the Gaikwár's tribute," the Gaikwár should send no troops into either of those tracts without the consent of the British Government, and make no demands on any one there except through them. Now the Privy Council in the judgment gave a sketch of what the tributary relations of these Chiefs of Káthiáwár were, which he had not verified, but believed was generally correct. It was said that "the entire number of Káthiáwár States under separate Chiefs (large and small) is 188: of whom, 96 pay tribute to, or in right of, the British Government only; 70 to, or in right of, the Gaikwár only; and 9 (of whom the Thákur of Bhaunagar is one) to, or in right of, both Governments."

Now he would ask any person who contended that Káthiáwár was British territory, on what date and by what arrangement it became so? As regards a great portion of it, the right which we possessed was simply the right to collect the Gaikwár's tribute for him. As regards another portion, we collected both the Gaikwár's tribute and our own. MR. HOPE found no treaty, or agreement,

or arrangement, by which the Gaikwár transferred to us the sovereignty (if it belonged to him) of the States which paid tribute to himself; no agreement by which it was ever intended that the States which paid tribute both to us and the Gaikwár should become more British than Gaikwár territory, or the joint-territory of both. In point of fact, he thought a careful scrutiny of the leading documents of those days could not lead to any conclusion other than that the whole territory was as completely foreign territory as that of the Nizám or of the Gaikwár of Baroda. The Government had been described as being throughout India the Paramount Power, and its position with regard to Káthiáwár was the same as that which it held towards the Nizám of Haidarábád, or the Gaikwár of Baroda, with this addition, that it possessed a certain right, which might be termed a rent-charge, in some of the States. But the fact of possessing such a rent-charge did not constitute those States British territory. Or, to take a further illustration, the British Government, by enforcing and collecting all the different tributes due to other Powers, no more became the owner of the whole territory than the German Government became the owner of France, or France became German territory, from the fact that the former imposed a large contribution upon the latter, or would have become so, even if the contribution imposed had been in the form of an annual tribute to be paid for ever.

In addition to these statements, which MR. HOPE had taken from treaties and documents, he could add his personal testimony as to what had been the universally accepted opinion of the Political officers of the earlier period of British interposition. It so happened that it had been his official duty previous to 1860, and for five years before he took up this matter, to spend several months in every year in Káthiáwár and the rest of the Native States in the Bombay Presidency; and in the course of his duties, he naturally became personally acquainted with the views, the position, and the condition of almost every State in Guzarát. He was also on terms of intimacy with the older class of Political officers—Colonel Laing, who had been some thirty years in Káthiáwár, Colonels Keily, Whitelock, Barr, Short, Black and others, every one of whom had now passed out of the country—and he could safely say, that if the theory had then been propounded that Káthiáwár was British territory, they would one and all have at once repudiated it. Moreover, the view that it was not so had been repeatedly taken by the Court of Directors, as early as 1824, and again in 1858, and was more lately affirmed by the Secretary of State himself.

It might be thought that the history of the gradual establishment of Courts in the interior militated against his argument. They had a tolerably

correct sketch of that history given in the judgment of the Privy Council; but MR. HOPE would point out that it was a fundamental error to suppose that though, in virtue of being the Paramount Power, we might certainly interfere, we had done more in establishing these jurisdictions than gradually to interpose, with the outward concurrence, at least, of the Chiefs themselves, and after full consultation with them, for the public good. No doubt the Government found it necessary to interfere in the affairs of Baroda; and it might be necessary to interfere for the public safety with any State however independent. But it was impossible to argue from that that such State was British territory, or had anything British about it. To have established these Courts on any other basis than that on which we had done so, would have been a most unwarrantable usurpation, and would have justified far more serious objection than in any case was actually offered to it.

He feared he had wearied the Council with these explanations. He could not however let pass the opportunity of placing these facts on record, and he ventured to hope that, if ever hereafter this judgment should be made the basis of, or afford a suggestion for, fresh proceedings, whether in the case of Bhaunagar or any other State in Political Guzarát, they might prove to be not wholly valueless.

The Hon'ble MR. HOBHOUSE said he was not quite certain whether his Hon'ble friend Mr. Hope considered that the judgment of the Privy Council involved the opinion that Káthiáwár was British territory. MR. HOBHOUSE considered that the Privy Council had pronounced no such opinion; on the contrary, they had carefully guarded against it. That question was not before them, nor had they the materials for a decision upon it. Their view was, as he understood it, that the Káthiáwár Political Agency consisted of a bundle of distinct States knit together by the bond of one administration set up by the British Government, and that it was quite consistent with the form of that administration that some of those States should be British territory and others not. Therefore, they held that the document of 1860, which only professed to transfer, not to the Thákur of Bhaunagar as the present notification did, but only to the Political Agency of Káthiáwár, was perfectly consistent with an intention that the villages should remain British territory, whatever might be the character of the Káthiáwár States themselves.

The Hon'ble MR. HOPE said that, with the permission of the President, he would merely explain, with reference to what had fallen from the Hon'ble Mover, that he was aware that the Privy Council had abstained from deciding that Káthiáwár was British territory. The judgment was somewhat obscure, and its meaning had sometimes to be arrived at by inference. No doubt the explana-

tion suggested by Mr. Hobhouse was the correct one. At the same time, as the judgment contained passages which, if they did not indicate a tendency on the part of their Lordships to think that Káthiáwár was British territory, might be made use of by others to support a fresh argument to that effect, he had thought it best, in view of the possibility of the question being raised at some future date, to which the Hon'ble Mover had alluded, to take this opportunity of placing on record both the view of the status of Káthiáwár held in 1860, and the grounds for believing that view to be correct.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then applied to the President to suspend the Rules for the Conduct of Business.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. HOBHOUSE then introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be passed.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to consolidate and amend the law relating to the management and preservation of Government forests in the province of British Burma.—The Hon'ble Mr. Hobhouse, the Hon'ble Sir A. J. Arbuthnot and the Hon'ble Mr. Cockerell and the Mover.

The Council adjourned to Wednesday, the 13th December 1876.

CALCUTTA;
The 6th December 1876.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Government Central Press.—No 293 L. D.—18-12-76.—330

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 13th December 1876.

PRESENT:

Major-General the Hon'ble Sir H. W. Norman, K.C.B., Senior Member of the Council of the Governor General of India, *presiding*.

His Honour the Lieutenant Governor of Bengal, K.C.S.I.

The Hon'ble Arthur Hobhouse, Q.C.

The Hon'ble E. C. Bayley, C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

The Hon'ble R. A. Dalyell.

The Hon'ble T. C. Hope.

The Hon'ble J. R. Bullen Smith, C.S.I.

The Hon'ble F. R. Cockerell.

LAND IMPROVEMENT BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to amend the Land Improvement Act, 1871, be taken into consideration. He had next to no remark to make about this Report, He had explained fully to the Council what the object of it was, namely to put the relations of lenders and borrowers on a clear footing, and on the footing which was intended when the Act of 1871 was framed. That had been done, and in that part of the Bill, which was the only important part, the Committee had made no alteration. They had made two small alterations in two other sections of the Bill, both of which were mentioned in the Report, and he need not trouble the Council with any details with regard to them.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

INDIAN MUSEUM BILL.

The Hon'ble MR. BAYLEY moved that the Reports of the Select Committee on the Bill to provide for the management of the Public Museum at Calcutta

be taken into consideration. He had already explained the objects of the Bill, which were, in the first place, to give effect to the arrangement whereby the Government was relieved from the necessity of providing accommodation for the Asiatic Society in the new Museum building according to a mutually satisfactory arrangement between the Government and the Society; the second object being to define the legal position of the Government; and the third, to improve the constitution of the body of trustees itself and to facilitate their work. The Bill as amended provided, he hoped, satisfactorily for these objects.

The Hon'ble MR. HOBHOUSE begged to express his satisfaction, he being one of the trustees of this institution, at the alterations made by the Bill in the constitution of that body. For some years of his life it was a principal part of his duty to watch the operation of bodies of trustees, and to find the best modes of constituting them. And the conclusion he came to about *ex officio* trustees was that the best of all trustees was an *ex officio* trustee whose office connected him with the institution of which he was a trustee; but that an *ex officio* trustee whose office had no connection with the institution of which he was trustee, was the worst of all trustees. He did not then think that he should live to exemplify part of his own theory. But it so happened that the Governor General in Council thought fit to appoint him Vice-Chancellor of the University of Calcutta. Then he found that he was summoned to a meeting of trustees of the Museum. At first he thought they had done him the honour of electing him a trustee without his consent, and he asked to be relieved from the office. But he was informed that by accepting the office of Vice-Chancellor of the University he had become a trustee of the Museum. He ventured to say that a more inefficient and in every respect a worse trustee of the Museum could not be found. He knew nothing of the business, and from want of leisure could not learn about it by study. He was only a useless encumbrance on any discussion that might arise, and his signature to papers he did not understand was a sham. The consequence was that he was obliged to excuse himself from attending the meetings of the trustees, and he had in fact taken no part except a passive one in business of the trust except such business as was connected with the preparation of this Bill.

The Bill proceeded on the ground that it was not desirable to have a number of *ex officio* trustees who were unconnected with the business of the Museum. If the trustees appointed under the Act wanted some official, such as the Vice-Chancellor of the University or any other, it would be easy for them to elect him. The Bill conferred on them the useful power of cooptation into their body to the extent of three members. Consequently if hereafter the trustees desired the presence of some person whose appointment was not pro-

vided for by the Charter of the institution, but who appeared to them to be a useful addition to their body, the Bill provided for the appointment of such person. That was the new constitution under the Bill; and MR. HOBHOUSE had no doubt that it would be found much more effectual, because, owing to the constitution of the present body of trustees, it was often difficult to get a quorum at meetings of the trustees.

The Hon'ble MR. BAYLEY had only to say that, as far as the Hon'ble and learned Member had taken a share in the deliberations of the trustees of the Museum, the assistance which he had rendered had been very great, and MR. BAYLEY was able to say that the amendments in the Bill were due to the Hon'ble Member's advice: it was only to be regretted that his other avocations had prevented his taking a larger share in the other business of the Museum.

He wished to explain another point. The Bill recited that the trustees had signed the lists of collections of the Asiatic Society which was required by law. It had been found impossible to get the signatures of all the trustees, as one of the present *ex officio* trustees, the Bishop of Calcutta, was not in India, and another member was at present away from Calcutta. But the lists had been signed by a majority of the trustees, far larger than was necessary to constitute a quorum.

The Motion was put and agreed to.

The Hon'ble MR. BAYLEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council adjourned *sine die.*

CALCUTTA,
The 13*th December* 1876.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department.

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